Supreme Court, U.S.

001686 MAY - 4 2001

OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

RONALD DAVID ROST,

Petitioner,

v.

THE CITY OF HENDERSON, *ET AL.*,

Respondents.

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

BILLY SMITH, JR., ESQ.
Counsel of Record
KENNETH M. ROBERTS, ESQ.
JOHN HENRY WRIGHT, ESQ.
DEMPSEY, ROBERTS & SMITH, LTD.
520 S. Fourth Street, Suite 360
Las Vegas, Nevada 89101
(702) 388-1216
Counsel for Petitioner

106 pp

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Filed February 6, 2001

RONALD DAVID ROST,
Appellant,
vs.
CITY OF HENDERSON,
Respondent.

Janette M. Bloom
Clerk of Supreme Court
BY /s/ J. Richards
Chief Deputy Clerk

No. 36556

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).
It is so ORDERED.

It is so ORDERED.

"s/ J. Shearing"

"s/ J. Agosti"

"s/ J. Leavitt"

cc: Hon. Mark W. Gibbons, District Judge
Henderson City Attorney
Dempsey Roberts & Smith
Clark County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

Sup. Court No. 36556, Dist. Court Case No, C163658

RONALD DAVID ROST,
Appellant,

vs.

CITY OF HENDERSON,
Respondent.

APPELLANT'S PETITION FOR REHEARING

KENNETH M. ROBERTS, ESQ.
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IN THE SUPREME COURT OF THE STATE OF NEVADA

Sup. Court No. 36556, Dist. Court Case No, C163658
RONALD DAVID ROST,
Appellant,
vs.
CITY OF HENDERSON,
Respondent.

APPELLANT'S PETITION FOR REHEARING

Appellant RONALD DAVD ROST, by and through his attorneys, KENNETH M. ROBERTS, Esq. and JOHN HENRY WRIGHT, Esq. of the law firm DEMPSEY, ROBERTS, & SMITH, LTD., hereby petitions this Honorable Court for a rehearing of his appeal.

This Petition is made pursuant to Rule 40 of the Nevada Rules of Appellate Procedure, and is based upon the records and files of this case as well as the Memorandum of Points and Authorities which accompanies this Petition.

Dated this 27th day of October, 2000.

DEMPSEY ROBERTS & SMITH, LTD.
"s/John Henry Wright, Esq."
KENNETH M. ROBERTS, ESQ.
Nevada Bar No. 4729
JOHN HENRY WRIGHT, ESQ.
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520 S. Fourth Street, Suite 360
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IN THE SUPREME COURT OF THE STATE OF NEVADA

Sup. Court No. 36556, Dist. Court Case No, C163658
RONALD DAVID ROST,
Appellant,
vs.
CITY OF HENDERSON,
Respondent.

APPELLANT'S PETITION FOR REHEARING

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION:

On October 12, 2000, this Court issued an Order of Affirmance of Appellant's conviction. Pursuant to Rule 40, N7RAP, Appellant hereby timely files his petition for a rehearing of his appeal.

II. DISCUSSION

Rule 40(c)(2), NRAP provides in part:

The court may consider rehearings in the following circumstances:

(i) When it appears that the court has overlooked or misapprehended a material fact or a material question of law in the case, or

(ii) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case. Appellant believes that the Court has overlooked or misapprehended a

material fact in the record. In its decision, this Court stated:

"Moreover it is clear that appellant's contention lacks merit. Contrary to appellant's assertions, the information that led to the investigatory stop of appellant came from two identified citizen-informants, not an anonymous tip." (Emphasis added) Furthermore, in a footnote, this Court noted:

The fact that the citizen-informants called the information into police dispatch and did not personally speak with the officers prior to the investigatory stop of appellant does not make it an anonymous tip. The key is that the citizen-informants identified themselves and thereby exposed themselves to possible civil and criminal prosecution if the report was false. (Citation omitted; emphasis added)

Clearly, pivotal in the Court's decision affirming Appellant's conviction is the conclusion that the "citizen-informants identified themselves." However, it is evident from Mr. Kelly Jones' testimony that his wife made the call to the police. (See ROA, p. 6, lines 5-6)

Although the citizen who called the police eventually identified herself, her identification was not made until after Appellant 's constitutional rights against unreasonable search and seizure had already been violated by Sergeant Vadasy. The facts of the instant case clearly show that, before the search and seizure of Appellant was made, the police did not know the identity of the caller.

The State has the burden of establishing that Appellant's constitutional rights were not violated. Therefore, at trial, it was incumbent upon the prosecution to show that the police identified the caller prior to stopping Appellant. However, nothing in the record establishes that the State met their burden. The dispatcher did not testify at trial. The actual caller did not

testify. No testimony was taken as to the time frame when identification of the caller was made. The only evidence of when the identification was made was the written statement of the caller, which was taken after the Defendant had already been stopped and questioned by police. (ROA, p. 6, lines 5-6) The prosecution failed to elicit testimony necessary to establish the requisite knowledge to identify the caller, and to confirm the credibility of the tipster. Therefore, for all intents and purposes, the call was anonymous, and the stricter standard handed in Florida v. J.L., 120 S. Ct. 1375, 146 LEd. 2d 254, 2000 WL 309131,68 US LW 4236 (March 28, 2000) must be applied in this case.

As the court knows, in Florida v. J.L., 120 S. Ct. 1375, 146 LEd. 2d 254, 2000 WL 30913 1, 68 US LW 4236 (March 28, 2000), the Supreme Court of the United States opined that the "reasonableness of official suspicion must be measured by what the officers knew before they conducted the search." 120 S.Ct., at 1378. In other words, the facts provided by an unknown informant must be corroborated by the police prior to any Terry type intrusion upon a person. In the instant case, the identity of the caller was not known until after Appellant's constitutional right against unreasonable search and seizure was violated.

III. CONCLUSION:

Based on the foregoing, Appellant believes the court has overlooked or misapprehended a material fact in the record. Therefore, Appellant requests that his appeal be reheard and be reconsidered.

Dated this 27th day of October, 2000.

DEMPSEY ROBERTS & SMITH, LTD.
"s/ John Henry Wright, Esq."

KENNETH M. ROBERTS, ESQ.
Nevada Bar No. 4729
JOHN HENRY WRIGHT, ESQ.
Nevada Bar No. 6182
520 S. Fourth Street, Suite 360
Las Vegas, NV 89101

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD DAVID ROST,	Filed Oct. 12, 2000
Appellant,	Janette M. Bloom
vs.	Clerk of Supreme Court
CITY OF HENDERSON,	By J. Richards
Respondent.	Chief Deputy Clerk

No. 36556

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On September 20, 1999, appellant was convicted in municipal court of misdemeanor driving under the influence.

The municipal court stayed imposition of the jail sentence pending appellant's appeal in the district court. On April 13, 2000, the district court affirmed the municipal court conviction. Appellant filed a notice of appeal from the district court's order affirming the municipal court conviction; however, this court dismissed the petition for lack of jurisdiction because the district courts have final appellate jurisdiction in cases arising in municipal courts. See Rost v. City of Henderson, Docket No. 36026 (Order Dismissing Appeal, June 15, 2000)

On June 20, 2000, appellant, represented by counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. Appellant claimed that his constitutional right to be free from unreasonable search and seizure was violated when he was stopped and seized pursuant to an anonymous tip that lacked sufficient indicia of reliability. The district court denied

the petition, concluding that:

> [B]ased on information concerning the make, color, and license number of the vehicle driven by Petitioner, as well as information regarding Petitioner's erratic driving which was supplied by two (2) named citizens . . . who were following Petitioner, the traffic stop conducted by the Henderson police officers was reasonable, valid, and proper.

This timely appeal followed.

Appellant contends that the district court erred in denying his petition. We disagree.

Appellant raised the same constitutional challenges to the traffic stop on direct appeal to the district court. The district court rejected the claim. "'The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.'" Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 796 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). In an apparent attempt to circumvent the doctrine of the law of the case, appellant indicated in his petition that he was raising this issue again because subsequent to the filing of the briefs on appeal, the United States Supreme Court decided Florida v. J.L., 529 U.S. ___, 120 S. Ct. 1375 (2000). According to appellant, the decision in J.L. supports his position that his constitutional rights were violated and warrants relitigation of this issue. We disagree.

First, the relevant portion of J.L. does not announce a new rule. In fact, the J.L., decision cites extensively to Alabama v. White, 496 U.S. 325 (1990), in support of the proposition that an anonymous tip must bear sufficient indicia of reliability before it can provide reasonable suspicion to make an

investigatory stop. See J.L., 529 U.S. at ___, 120 S. Ct. at 1378-79. We therefore conclude that appellant's reliance on J.L. does not warrant deviation for the doctrine of the law of the case.

Moreover, it is clear that appellant's contention lacks merit. Contrary to appellant's assertions, the information that led to the investigatory stop of appellant came from two identified citizen-informants, not an anonymous tip. The identified citizen-informants supplied sufficient detail to support a stop and detention, and the officer satisfactorily corroborated the report.3 See Mulcahy, 943 P.2d at 235-38. We therefore conclude that appellant failed to demonstrate that his Fourth Amendment rights were violated.

Having considered appellant 's contention and concluded that it lacks merit, we affirm the district court's order denying appellant's post-conviction petition for a writ of habeas corpus.

It is so ORDERED.
"s/ J. Shearing"
"s/ J. Agosti"
"s/ J. Leavitt"

cc: Hon. Mark W. Gibbons, District Judge
Henderson City Attorney
Dempsey Roberts & Smith
Clark County Clerk

---

3 Because anonymous tips are on the low end of the reliability scale, more informantion is required to raise a reasonable suspicion than is required where, as here, the tip is provided by an identified citizen-informant. See J.L, 529 U.S. at _, 120 S. Ct. at 1378; White, 496U.S. at 330-31.

NOAS
KENNETH M. ROBERTS, ESQ.
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JOHN HENRY WRIGHT, ESQ.
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Tel. No. 388-4216
Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

Filed Aug 8, 8 46 AM '00 "s/Shirley B. Parraguirre
CLERK

RONALD DAVID ROST,
Defendant/Petitioner,
vs.
CITY OF HENDERSON,
Respondent.

Case No. 163658
Dept. No. VII

NOTICE OF APPEAL

RONALD DAVID ROST, defendant above named, by and through his attorney KENNETH M. ROBERTS, ESQ. and JOHN HENRY WRIGHT, ESQ., of the law firm of DEMPSEY, ROBERTS, & SMITH, LTD., hereby appeals to the Supreme Court of Nevada the District Court's decision denying Defendant's Petition for Writ of Habeas Corpus. (See copy of Order filed July 20, 2000, attached hereto as Exhibit 1)

This notice of appeal is made pursuant to Rules 3A, 4 and 22 of the Nevada Rules of Appellate Procedure.

Dated on the 8 day of August, 2000

DEMPSEY, ROBERTS, & SMITH, LTD.
"s/John Henry Wright, Esq."
KENNETH M. ROBERTS, ESQ.
Nevada Bar No. 4729
JOHN HENRY WRIGHT, ESQ.
520 S. Fourth Street, Suite 360
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ORDR
LIN T. NG, ESQ.
Deputy City Attorney
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243 Water Street
Henderson, NV 89015
(702) 565-2814
Attorney for Respondent
CITY OF HENDERSON, NEVADA

Filed Jul 20, 1050 AM'00
Shirley B. Parriguirre
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

ROST, RONALD DAVID,
Petitioner.

Case No. C163658 vs.

CITY OF HENDERSON,
Respondent.

Dept. No. VII

ORDER

This matter came before this Court on July 7, 2000 upon Petitioner Ronald Rost's Motions for Stay of Sentencing and Petition for Writ of Habeas Corpus. Martin Hastings, Esq. appeared and argued the matter for the law firm of DEMPSEY, ROBERTS & SMITH, LTD. Petitioner was not present. The City of Henderson was represented by Lin T. Ng, Esq., Deputy City Attorney.

Having considered the pleadings and papers herein and heard oral arguments of counsel, this Court finds that, based on information concerning the make, color, and license number of the vehicle driven by Petitioner, as well as information regarding Petitioner's erratic driving which was supplied by two

(2) named citizens, Mr. & Mrs. Kelly Jones who were following Petitioner, the traffic stop conducted by the Henderson police officers was reasonable, valid, and proper.

Good cause appearing therefore,

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is denied.

IT IS FURTHER ORDERED that sentencing in this matter is hereby stayed for ninety (90) days.

IT IS FURTHER ORDERED that a status check is hereby set for Friday, October 6, 2000 in Department VII, at 10:00 a.m.

DATED this 18 day of July, 2000.

HONORABLE MARK GIBBONS
DISTRICT COURT JUDGE
"s/MARK GIBBONS"

Submitted by:
"s/LIN T. NG"
LIN T. NG, ESQ.
Deputy City Attorney
2.43 Water Street
Henderson, NV 89015
Attorney for Respondent
CITY OF HENDERSON. NEVADA

NEOJ
LIN T. NG, ESQ.
Deputy City Attorney
Nevada State Bar No. 002425
243 Water Street
Henderson, NV 89015
(702) 565-2814
Attorney for Respondent
CITY OF HENDERSON, NEVADA

DISTRICT COURT
CLARK COUNTY, NEVADA

ROST, RONALD DAVID,
Petitioner. Case No. C163658 vs.

CITY OF HENDERSON, Dept. No. VII
Respondent.

NOTICE OF ENTRY OF ORDER

TO: RONALD DAVID HOST, Appellant; and

TO: KENNETH M. ROBERTS, ESQ., Appellant's attorney.

PLEASE TAKE NOTICE that an ORDER was entered and filed in the above-entitled matter on July 20, 2000, a copy of which is attached hereto.

DATED this 2nd day of August, 2000.
CITY OF HENDERSON, NEVADA
SHAUNA M. HUGHES, CITY ATTORNEY

By: "s/LIN T. NG"
LIN T. NG, ESQ.

Deputy City Attorney
Nevada State Bar No. 002425
243 Water Street
Henderson, NV 89015
Attorney for Respondent
CITY OF HENDERSON

CERTIFICATE OF MAILING

I hereby certify that on the __2__ day of August, 2000 I served the above and foregoing NOTICE OF ENTRY OF ORDER by depositing a true and correct copy thereof in the United States mail, postage fully prepaid thereon, and addressed to the following:

RONALD DAVID ROST
831 Harbor Beach Court
Henderson, NV 89015

KENNETH M. ROBERTS, ESQ.
DEMPSEY, ROBERTS & SMITH, LTD.
520 South 4th Street, #360
Las Vegas, NV 89101

"s/ Anita V. Murn
An Employee at the Deputy
City Attorney's Office
City of Henderson, NV

MUNICIPAL COURT OF THE CITY OF HENDERSON
IN THE COUNTY OF CLARK, STATE OF NEVADA

CITY OF HENDERSON, NEVADA,
Plaintiff,

vs.

ROST, RONALD DAVID
Defendant.

Case No. 75294876-01
Shauna Hughes, City Attorney

CRIMINAL COMPLAINT

The defendant has committed the crime of DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR (Nevada Revised Statute 484.379-1, the Henderson City Charter, Section 2.140) within the City of Henderson, in the County of Clark, State of Nevada, a misdemeanor, in the manner following, to wit:

That the said defendant, on or about the 10th day of June, A.D., 1999, did wilfully and unlawfully drive or be in actual physical control of a 1994 GMC Utility Van, white in color, bearing Nevada license plate number 44OFRR, on a highway or on premises to which the public has access, while under the influence of intoxicating liquor and/or was found by measurement within 2 hours after

driving such vehicle to have 0.10 percent or more by weight of alcohol in his blood, all of which occurred while traveling southbound on US 93 to Lake Mead and Water, continuing to Pacific and Horizon and subsequently to 831 Habor Beach Court, all of which is contrary to the form, force and effect of

statutes in such cases made and provided and against the peace and dignity of the City of Henderson, State of Nevada.

Said Complainant makes this declaration on information and belief subject to the penalty of perjury.

"s/Lin T. Ng"
Lin T. Ng, Complainant
Deputy City Attorney

Dated: June 26, 1999
DR#: 99-11844
DCA#: 990002422

UNLAWFUL DISSEMINATION OF THIS RESTRICTED INFORMATION IS PROHIBITED. VIOLATION WILL SUBJECT THE OFFENDER TO CRIMINAL AND CIVIL LIABILITY.
REL. TO: RONALD ROST
DATE 7/13/99
DEPUTY CITY ATTORNEY'S OFFICE

MUNICIPAL COURT
CLARK COUNTY, NEVADA

CITY OF HENDERSON,
Plaintiff,
vs.
RONALD ROST,
Defendant.

Case No. 75294876-1 Dept. No. I

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KENNETH PROCTOR
Taken on Monday, September 20, 1999; 10:00 a.m.
At 243 Water Street
Henderson, Nevada

APPEARANCES:
For the Plaintiff:
ROBERT ZENTZ, ESQ.
Deputy City Attorney
243 Water Street
Third Floor
Henderson, Nevada 89105
For the Defendant:
PAUL KIRST, ESQ.
KIRST & ASSOCIATES
930 South Third Street
Suite 300
Las Vegas, NV 89101

I N D E X

	Direct	Cross	Redirect	Recross
Plaintiff's Witnesses				
Mr. Kelly Jones				
(By Mr. Zentz)	5			
(By Mr. Kirst)		9		
Sergeant Robert Vadasy				
(By Mr. Zentz)	11		21	
(By Mr. Kirst)		15		23
Officer Jackie Brooks				
(By Mr. Zentz)	24		68	
(By Mr. Kirst)		46		

EXHIBITS

Number		Description
Plf's A	46	Declaration of Lois Howell
Plf's B	46	Declaration of Terry Perkins
Plt's C	46	Declaration of Brian Thomas
Dft's 1	10	Letter from Kelly Jones
Dft's 2	46	DUI summary
Dft's 3	48	DUI summary

Dft's 4	55	Narrative by Officer Brooks
Dft's 5	63	Printout of intoxalyzer

THE CLERK: City recalls Ronald Rost to trial 75294676.
MR. KIRST: Thank you, Your Honor. We were unable to investigate this matter. We have the Defendant in the court.
THE COURT: Very well. Any preliminary motions?
MR. ZENTZ: Not from the City.
THE COURT: Call your first witness.
MR. ZENTZ: Call Kelly Jones.
MR. KIRST: May I have two seconds to speak to Mr. (indiscernible)?
THE COURT: Certainly.
MR. KIRST: Thank you.
THE CLERK: Remain standing right there, sir.
THE WITNESS: Okay.
THE COURT: Please swear him in.
Thereupon - -
KELLY JONES
was called as a witness by the Plaintiff and, having been first duly sworn, testified as follows:
THE WITNESS: Yes.
THE CLERK: Thank you.
MR. ZENTZ: Thank you, Your Honor.
DIRECT EXAMINATION
BY MR. ZENTZ:

Q. Sir, would you please state your full name and spell your last name.
A. Kelly Reid Jones, J-O-N-E-S.
Q. Mr. Jones, on June 10th of 1999, at about 9:20 evening

do you know where you were?
A. Yes. We went to the Skyline to eat dinner and leaving there.
Q. What time do you think you left?
A. I'm not really sure, sir.
Q. And after you left did you have an occasion to make contact with anyone that's in the courtroom today?
A. Yes.
Q. Who was that, sir?
A. Mr. Rost.
Q. Where did you make contact with him at?
A. On Boulder Highway he passed very erratically.
Q. I'm sorry, sir, I -
A. We were driving down Boulder Highway and he us almost hitting us.
Q. What color of vehicle was he driving?
A. I believe it was a white pickup.
Q. And did you see the driver of the pickup?
A. No, I did not.
Q. Okay. So how do you know it was Mr. Rost?
A. I did not know it was him. I'm sorry.
Q. But that night what did you do when this vehicle passed you?
A. We followed-we were just driving down Boulder Highway and he was driving very erratically back and forth on the road. My wife called-I'm not sure what number she called, 911 or DUI hotline. And they -

MR. KIRST: Object for any further testimony at this point. He doesn't even know what number was-was dialed. If he didn't-wasn't-didn't partake in the dialing of the phone number I would object to anything that may have taken place or any conversation may have taken place after that.

MR. ZENTZ: Your Honor, I'm not going to seek any

of that information.

THE COURT: Very well.

BY MR. ZENTZ:

Q. This vehicle-which way were you headed, sir?

A. We were headed, I'm not sure of my directions, but from the Skyline towards the Joker's Wild.

Q. And about where was it when you first noticed this vehicle?

A. I'm-we just basically pulled out of the Skyline where maybe, I don't know, before where that light at Warm Springs is. Is now, but wasn't then.

Q. Okay.

A. About right there.

Q. And you said the vehicle passed you?

A. Yes.

Q. Did it pass you on the left or on the right?

A. I believe it passed us on the left. We were in the slow lane.

Q. And after it passed you what happened?

A. We just basically drove down the street and watched him as he was weaving back and forth on the road.

Q. And on that day did you observe the vehicle itself?

MR. KIRST: Objection, Your Honor. Asked and answered.

BY MR. ZENTZ:

A. I'm not sure what you mean by that.

THE COURT: Sustained.

BY MR. ZENTZ:

Q. All right. As this vehicle's traveling on Boulder Highway did it continue in the same direction you were heading?

A. Yes.

Q. And did you continue to observe this vehicle?
A. Yes.
Q. And where'd the vehicle travel to?
A. It made a right on Water Street, the side road

that goes into Water Street from Boulder Highway.
Q. And did it continue there?
A. Yes.
Q. And at any point in time did the police pull the vehicle over that you saw?
A. No.
Q. All right. How far did you follow that vehicle? You said you were on Water.
A. He turned right on Pacific and went down to Horizon, made a right there, and they asked my wife to tell us to pull over after we passed the 93 freeway and wait for the police.
Q. And did you do that?
A. Yes.
Q. And did a police officer eventually make contact with you?
A. Yes.
Q. And are you-you said it was a white vehicle.
A. I believe.
Q. Are you able to describe it any better-
MR. KIRST: Objection, Your Honor. Again asked and answered.
THE COURT: Overruled.
MR. KIRST: A description of the vehicle's been given.

THE COURT: Overruled.
BY MR. ZENTZ:
A. No, I do not.

Q. Okay.

MR. ZENTZ: Nothing further.

THE COURT: Cross-examine.

MR. KIRST: Thank you very much, Your Honor.

CROSS-EXAMINATION

BY MR. KIRST:

Q. You say that you pulled over and waited for a police officer to make contact with you; is that correct?

A. Yes.

Q. Did you have any other contact with my client on that day?

A. No.

Q. Did you see him again on that day?

A. No.

Q. Did you see him being arrested?

A. No.

MR. KIRST: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. KIRST:

Q. I'm showing you what has been marked as Defendant's Proposed Exhibit No. 1. Can you please tell me if you've ever seen that before.

A. Yes.

Q. Can you please tell me what it is.

A. That's what I wrote after the police officer met us.

Q. Okay. Did you sign that document?

A. Yes, I did.

Q. Is that your signature?

A. Yes.

MR. KIRST: Your Honor, I'd move for the

admission of Defendant's Proposed Exhibit No. 1.

THE COURT: Any objection?

MR. ZENTZ: No, Your Honor.

THE COURT: One will be entered.

(Thereupon, Defendant's Exhibit No. 1 was marked for identification.)

MR. KIRST: Thank you very much, Your Honor.

BY MR. KIRST:

Q. I know that there's now-I plea now to that I've highlighted a portion of that letter. Can you please read that to the Court.

A. Sure. The part that you highlighted?

Q. Yeah. And I did the highlighting I will tell you that.

A. Almost ran a red light at Water and Lake Mead.

Q. Okay. Thank you. Did-did the vehicle you see run a red light or did they almost run the red light?

A. No, he almost. He stopped really fast.

Q. Okay.

MR. KIRST: I have nothing further of this witness, Your Honor. Thank you.

THE COURT: Thank you. Redirect.

MR. ZENTZ: Nothing.

THE COURT: Mr. Jones, you may step down. Thank you. Is this witness excused?

MR. ZENTZ: Yes, Your Honor.

THE COURT: You may go, sir. Thank you.

MR. ZENTZ: Call Robert Vadasy.

Thereupon- -

SERGEANT ROBERT VADASY

was called as a witness by the Plaintiff and, having been first duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you. You may be seated.
DIRECT EXAMINATION
BY MR. ZENTZ:
Q. Sir, if you would please state your full name and spell your last name for the record.
A. Robert Vadasy, V-A-D-A-S-Y.
Q. Mr. Vadasy, by whom and what capacity are you employed?
A. I'm employed by the city of Henderson as a police sergeant in patrol.
Q. How long have you been employed as a police officer?
A. For nearly 12 years.
Q. Were you employed and on duty on June 10th of this year?
A. Yes, I. was.
Q. Do you recall what shift you were working that day?
A. I was working swing shift from 3:00 p.m. until 1:00 a.m.
Q. At or about 9:20 in the evening did you receive a dispatch to any particular location?
A. Yes, I did. A dispatch came over reference a possible drunk driver that was heading south on Horizon towards Horizon Ridge.
Q. And was there a description of that vehicle provided?
A. Yes, there was. It was a white, utility vehicle and dispatch gave the license plate, which I asked for the registered owner information to find out the location of which it may be going.
Q. And was that provided to you?

A. It was.
Q. Did you respond to that area?
A. I went to the area of a 831 Harbor Beach to attempt to

locate that vehicle.
Q. Did you locate that vehicle?
A. As I was turning - - as I was coming down the street toward Harbor Beach I saw a vehicle turning onto Harbor Beach. At that time I wasn't – I didn't know if that was the vehicle or not. I couldn't tell. When I turned on to Harbor Beach I observed a white, utility vehicle pulling into the driveway of 831 Harbor Beach.
Q. What'd you do when you saw that vehicle?
A. I pulled up behind it and the driver turned off the vehicle and stepped out of the vehicle and I instructed him back to my patrol vehicle.
Q. And when you made contact with this person would you recognize him again?
A. Oh, yes, I would.
Q. If that person's present in the courtroom, could you point to him and describe what he's wearing today?
A. It's the Defendant wearing a beige and white-striped shirt and blue slacks it looks like.
MR. ZENTZ: Your Honor, can the record reflect he's identified the Defendant?
THE COURT: Yes.
BY MR. ZENTZ:
Q. When you made contact with him, did you make note of his appearance?
A. Yes, I did. Not so much his physical appearance. I observed an odor of unknown alcoholic beverage emitting from his person, and I noticed that as he was standing in front of my patrol car he was just swaying back and forth.
Q. Did you advise him why you made contact with him?
A. I don't believe I did at that time. Officer Brooks was not far away and I was standing by for him.
Q. And what did you do after Officer Brooks got there?

A. When Officer Brooks arrived he began administering a field sobriety test. I explained to him what I did and what I observed up to that point, and he began administering the field sobriety test. At that time there was a female that came outside the door, 831 Harbor Beach, and I went to explain to her what-what was going on outside of her -- going on outside of her residence.

Q. Officer, did all these events you testified to take place within the city limits of Henderson?

A. Yes, they did.

Q. Thank you.

MR. ZENTZ: I have nothing further of this witness, Your Honor.

THE COURT: Mr. Kirst.

MR. KIRST: Thank you.

CROSS - EXAMINATION

BY MR. KIRST:

Q. Did you have any conversations on that evening with anybody other than dispatch as it pertains to the information you were receiving on this vehicle you were pursuing?

A. No, sir.

Q. You had no personal contact with Mr. Jones?

A. No, I did not.

Q. You indicated that you saw a vehicle turn onto Harbor Beach; is that correct?

A. Yes, sir.

Q. You saw it turn into 831 Harbor Beach; is that correct?

A. Yes, I did.

Q. You indicate that you saw that the vehicle was turned off; is that correct?

A. When I --

Q. You saw it being turned off.

A. That's correct.

Q. I'm not trying to twist your-
A. Yeah, that's correct.
Q. How's it that you know it was being turned of f?
A. Well, the taillights and the headlights and everything like that went of f as-as right after-before the door opened.
Q. Were you still in your vehicle?
A. Yes, I was.
Q. Did you hear the vehicle being turned off?
A. Did I hear the engine?
Q. Of the Defendant's vehicle being turned off?
A. No.
Q. Did you ever observe the keys in the ignition of the vehicle?
A. No, I did not.
Q. You know how this process works. I've received a packet of discovery from the City and at least in the information I've received I have not received a report that you had drafted. Are you aware of having prepared such a report?
A. I did not.
Q. What have you reviewed in preparation for today's trial?
A. I reviewed the booking sheet from Officer Brooks's officer's report, the arrest packet.

Q. How many DUI arrests have you made this month?
A. None.
Q. How many arrests have you made this month approximately?
A. None.
Q. Are you normally-are you on duty still?
A. Yes, sir.

Q. How is it that you don't make any arrests-
A. I'm a patrol-
Q. -- or not made during this past month any arrests?
A. I'm a patrol sergeant. It's not my function.
MR. KIRST: Court's indulgence.
BY MR. KIRST:
Q. Did you at any time on that evening did you pull over Defendant's vehicle, or is it merely you saw that vehicle being pulled into the driveway?
A. I saw it as it was turning into the driveway and pulled up directly behind it.
Q. Did you notice any sort of erratic behavior --
A. No, I did not.
Q. -- with this vehicle?
MR. KIRST: Your Honor, may I approach the witness?
THE COURT: Yes, sir.

BY MR. KIRST:
Q. Sir, I'm not an artist. I don't expect you to be either. Could you give me just a quick diagram of --
A. Uh-huh.
Q. -- the location of the house on the lot, the driveway where you pulled in or the van was also.
THE COURT: Mr. Kirst, we have a board here that he's welcome to -
MR. KIRST: Oh, that'd be wonderful.
THE COURT: Whether we do it right --
MR. ZENTZ: Want me to bring him the board that we can print?
THE COURT: No. I think this is fine. Why don't we just --
BY MR. KIRST:

Q. And again nothing elaborate unless you're so inclined.

THE COURT: Sergeant, would you push this one door open a little bit here. Sergeant Vadasy, would you push that.

THE WITNESS: Sure.

THE COURT: Thank you, sir.

BY MR. KIRST:

A. It'd help if I could spell (indiscernible). The cul-de-sac really doesn't go out quite that far, but it's -

it's -- 831 would be like here. Yeah.

Q. Okay. Where were you when you first observed the vehicle? Where's -- where's the house and where's the driveway at 831?

A. It's like right here, and the driveway's --

Q. To the left of the house, to the right of the house?

A. It kind of pulls up into the -- well, the driver goes right into the house, but the majority of the house I would say is on the-the left side. So it'd be on the right side.

Q. (Inaudible) lot.

A. Right.

Q. The house would be the left of the driveway. It'd be towards the right side of the lot.

A. From what I recall, yeah.

Q. Okay. Where were you when you saw the vehicle pulling in?

A. Well, when-there was two instances. I saw the vehicle turning here and I was like say back here.

Q. Where-how far is that distance if you could please?

A. I'd say about more than --

THE COURT: I'm sorry. Which distance are you talking about?

MR. KIRST: I'm sorry. When -- where was --
THE COURT: Between the vehicle you observed turning and the police car?
MR. KIRST: Yes, Your Honor, I'm sorry. Yes.
BY MR. KIRST:
A. I'd say it's about less than 100 yards --
Q. Okay. Very good.
A. -- from that -- from that point. I mean, that's like I said guessing from where I was, but I don't believe it was any more than that.
Q. And your testimony was at that point you're not sure what type of vehicle --
A. I just saw a vehicle.
Q. -- that what you saw? A vehicle?
A. A vehicle.
Q. Okay. Go ahead.
A. And then --
Q. What was the next time you saw --
A. And then I saw -- the next time I saw the vehicle was traveling this way and I was here, already made the turn into the cul-de-sac there.
Q. How far is the distance between --
A. You know, that's a relatively short -- I think there's only a few houses on the straight portion of the cul-de-sac, so maybe three house lengths, widths of a lot.
Q. Okay. Can I get you to write three -- way over here --
A. Like three --
Q. -- I'm going to X three --
A. Just --
Q. -- three house lengths. Thank you, sir. Now, did you pull in behind him in the driveway or in front of the house? Where exactly-
A. When you rounded into the-into his driveway here, he

pulled into the driveway where from the driveway can be located on the map - -

Q. Right.

A. -- and I pulled in directly behind him here.

MR. KIRST: I believe that he can sit back down. I believe that will be all on the drawing. Thank you for the drawing. I have nothing further of this witness, Your Honor. Thank you.

THE COURT: Thank you. Redirect.

MR. ZENTZ: Just a couple things, Your Honor.

REDIRECT EXAMINATION

BY MR. ZENTZ:

Q. Officer -- sergeant, excuse me.

A. Thank you.

Q. You stated that it wasn't your function to make arrests.

A. That is -

Q. What are your functions as a sergeant?

A. I'm a supervisor of my patrol officers.

Q. All right. And in the last month can you make an estimate of how many DUI arrests that your officers have you've supervised?

A. An estimate would be about 25.

Q. In the last month?

A. That's correct.

Q. And in your 12 years as a police officer can you estimate of how many times you dealt with DUI cases?

A. I would say in excess of a thousand.

Q. This Harbor Beach Court is that in your area in supervised?

A. It is.

Q. And is that a public roadway?

A. It is.
Q. And so you saw that vehicle traveling on a public road?
A. I did.
Q. Thank you.
MR. ZENTZ: Nothing further.
THE COURT: Mr. Kirst.
MR. KIRST: I do have some recross.

RECROSS EXAMINATION
BY MR. KIRST:
Q. So you've been there and supervised approximately - I realize -- but approximately 25 DUI arrests during the course of the last month?
A. Yes, sir.
Q. Would you say that's a fairly average month?
A. Yeah, but I guess that'd be average.
Q. Do you know when this arrest took place?
A. Do I know when?
Q. Yes, the date?
A. I don't recall. I think it's the July 10th or something like that.
Q. As we already covered earlier you did not prepare a report in this matter. Can you tell me how it is with 25 arrests per month how it is you remember this much detail on this particular matter?
A. Sure. Because most of the Dill arrests that I supervise my officers make the stop, other officers arrive and then I show up just to watch and make sure that things are going correctly and if they need any help. This particular case I made the stop myself and I was there from the very beginning.
Q. Okay.

A. And that doesn't happen very often.

MR. KIRST: I have nothing further.
THE COURT: Thank you. Anything further from the City?
MR. ZENTZ: No, Your Honor.
THE COURT: Thank you, Sergeant Vadasy. You may step down.
MR. ZENTZ: Call Jack Brooks.
Thereupon --
OFFICER JACKIE BROOKS
was called as a witness by the Plaintiff and, having been first duly sworn, testified as follows.
THE WITNESS: Yes, I do.
THE CLERK: Thank you. You may be seated.
DIRECT EXAMINATION
BY MR. ZENTZ:
Q. Officer, if you would please state your full name and spell your last name for the record.
A. Jackie Ray Brooks, B-R-O-O-K-S.
Q. Mr. Brooks, upon whom and what capacity are you employed?
A. I'm employed as a police officer for the city of Henderson.
Q. How long have you been employed as a police officer?
A. Eight years.

Q. Were you employed and on duty on June l0th, 1999?
A. Yes, I was.
Q. Do you recall which shift you were working?
A. Yes, that's a Swing A shift and I was working the area, beat area of Adam.
Q. And what is the Adam area?

A. Adam area is where the Defendant resides within.
Q. All right. But geographically in the city?
A. Geographically it's bordered by Boulder Highway, South Railroad Pass Casino, north to 146 Lake Mead, back to the west to -- on past Gibson Road, and then back southbound. So that would give you a basic geographical location.
Q. At or about 9:20 in the evening on that day did you receive a dispatch to any particular location?
A. Yes, I did. What had happened was there was a dispatch aired about a possible DUI driver who was proceeding southbound on Boulder Highway being followed by another vehicle reporting the actions of that -- that driver and vehicle as they were observing him.
Q. And where were you dispatched to?
A. I was dispatched to the vicinity of Horizon and Horizon Ridge.
Q. Did you respond to that location?

A. Yes, I did.
Q. All right. And when you responded or while you were en route did you receive any additional information?
A. Further information that I heard over the air was that Sergeant Vadasy -- well, initially prior to that we had received dispatch information about where the registered owner information of the vehicle was registered to the residence, which was 831 Harbor Beach Court. Just shortly prior to my arrival at Horizon and Horizon Ridge Sergeant Vadasy had called out a stop on a vehicle as it was arriving - -
MR. KIRST: Your Honor, I object as to what -- the sergeant has already had an opportunity to testify and this would be hearsay as to what the sergeant said. Anything he said should have been elicited during direct, and probably

was, but I object to that.

THE COURT: Any objection?

MR. ZENTZ: Your Honor, it's not offered for the truth of the matter; it's simply that it fits the officer's state of mind and what he was understanding.

THE COURT: I'll sustain the objection, sir.

BY MR. ZENTZ:

Q. All right. So did you eventually make contact with anyone that's present in the courtroom today?

A. Yes, I did.

Q. Who is that?

A. That person is the Defendant.

Q. Can you point to him and describe what he's wearing?

A. Yes, I can. He has light-colored blonde hair, a plaid-type shirt with blue jeans, black blue jeans. It looks like black tennis shoes.

MR. ZENTZ: Your Honor, can the record reflect he's identified the Defendant?

THE COURT: Yes.

BY MR. ZENTZ:

Q. Where did you make contact with the Defendant?

A. I made contact with the Defendant in front of 831 Harbor Beach Court.

Q. And was there anyone else present at that time?

A. Yes, Sergeant Vadasy was present at that time.

Q. Okay. When you made contact with the Defendant did you make any notice to his appearance?

A. Yes, his appearance basically when I -- when I made contact with him I observed his eyes to be bloodshot and watery, his clothing to be somewhat -- it was normal clothing but dirty. Allegedly he had just gotten off work. His gate was unsteady and there was a moderate odor of an unknown

alcoholic beverage upon his person.
Q. And what did you do after you made contact with

him?
A. After I made contact with him I engaged him in conversation as to determine where he was coming from and -- and what he had done that led up to my contact with him.
Q. And what did he tell you?
A. And he told me he was coming from the Eldorado Casino. He also stated he had two beers, two 12-ounce Heineken beers.
Q. And did you take any further actions?
A. Yes, I did. I began -- I asked him if he would submit to a field sobriety test and he stated he would. Then I went ahead and began a preliminary check with him to determine if he was under the care of any doctor, physician, dentist or anything like that. He stated he was taking medication for back and stomach pains, although, he couldn't tell me what type of medication it was. He also stated that when I asked him if his medication -- if he could take that medication with an alcoholic beverage he stated no, he could not.
Q. But you didn't know what kind of medication?
A. No. He would not tell me. He couldn't remember or he wouldn't tell me what type.
Q. What'd you do then, officer?
A. At that point in time I went ahead and

administered a standardized -- it was basically a gaze, Horizontal Gaze Nystagmus.
Q. And have you been trained in the administration of Horizontal?

A. Yes, I have been.
Q. And when did that training take place?
A. That training took place approximately August or so of '92.
Q. What's involved in that training?
A. That training is -- we're trained to look at the eyes of the subject and determine if there's any nystagmus. Basically what we do is we have the -- the subject focus on an object, our finger or pencil, the top of it, and then we will slowly move it from left to right getting his eyes to follow -- follow that object from one side to the other. Initially we're looking for any lack of smooth pursuit. He exhibited a lack of smooth pursuit.
Q. Just a second. What is nystagmaus?
A. Nystagmus is the involuntary jerking of an eye.
Q. And you said you had this training in '92; is that correct?
A. That's correct.
Q. And how long was the training?
A. The training lasted approximately 24 hours.
Q. And did you successfully complete that training?
A. Yes, I did.
Q. And you administered that test to the Defendant?
A. Yes, I did.
Q. What were the conditions under which you administered the test?
A. The -- it was conditions being the -- the atmospheric --
Q. The weather?
A. -- conditions?
Q. Yes.
A. It was a clear night, calm, no wind.
Q. What about the lighting?
A. Well, lighting, we used the vehicle lighting and the

street lighting within the cul-de-sac, and also I have a flashlight that I utilize that also.

Q. Was this a fair area in which to do this test?

A. Absolutely.

Q. And how does the test actually - - what do you tell the Defendant to do?

A. Basically I look at the Defendant and I tell him that I want him to hold his head straight ahead, look straight ahead, do not move his head, and then I want him to follow the tip of my finger with his eyes only without moving his head. And then I asked him do you understand, and most of the time they acknowledge yes, they do understand. Mr. Rost gave me no indication that he didn't understand, so I proceeded with the test.

Q. Did he attempt to comply with the directions?

A. He did comply with the directions.

Q. And what do you -- now, you're looking for this involuntary jerking, but how many points are you looking for?

A. That's -- that's basically six points is what I'm looking for.

Q. And tell us now how did -- what -- how many points did you observe?

A. I observed six points.

Q. And what are those six points based on?

A. The six points are based on three separate indications that you're looking in the eyes. One of the first indications like I said was a lack of smooth pursuit. That's looking at each eye, and what you would do is have the subject follow the tip of your finger or object, whatever an officer may be holding. In this particular case it was my finger. I had him follow the tip of my finger with his eyes only and I'm looking for any lack of smooth pursuit.

Q. And you noticed that?
A. Yes, I did in both eyes.
Q. And what's the next thing you do?

A. Next I look basically for -- for an onset of nystagmus prior to 45 degrees, and that again is I have the subject follow my fingertip with his eyes only and I move my finger left and right offset 45 degrees and then I'm looking for any nystagmus prior to 45 degrees. Both of his eyes exhibited nystagmus prior to 45 degrees.
Q. And what is the last indicator you were (inaudible)?
A. The last indicator is that max deviation. That's where I have the subject look at my finger and I move my finger left and right taking his eyes as far as to the left and right that the subject can look, which is usually all the way over to the end of their head. And as he's looking off to the far right we're looking for nystagmus. If it's -- if -- if an individual has nystagmus, it's going to be very pronounced at that point. His nystagmus was very pronounced, both eyes.
Q. After you completed that test what did you do?
A. The next test is basically what I do is -- is I ask him to submit to a Rhomberg test. A Rhomberg test is basically--
MR. KIRST: Your Honor, I object to this point. This -- that test has not been approved and I'd object to the --to relevance if nothing else. There are accepted tests by the National Highway Traffic Safety and this is

not one of the approved tests. I object to any testimony regarding the Rhomberg test as a non-approved test.
THE COURT: Any further foundation from the City?

MR. ZENTZ: Well, Your Honor, I don't believe
state law requires them to do any sobriety test number one. Number two, it's just a test that the officers-I won't get into his training. It's just that, Your Honor, it's something for the officer to evaluate an individual. It doesn't have to be approved by any authority, go I don't know that that's relevant whether or not it's on the quote approved list from NHTS.

THE COURT: Go ahead and proceed.

BY MR. ZENTZ:

Q. Officer, what kind of training do you have in the administration of this Rhomberg test?

A. Approximately a little over a year ago our decided to add another test that the officers if they so desired and that's a Rhomberg test. what we're looking for is to see if an individual can close their eyes, tilt their head back slightly standing at a modified position of attention, and we're looking for any swaying that might be inhibited or accelerated by the use of alcohol, drugs or anything that would offset a person's equilibrium. We're also looking to see if that individual can-has a perception of time.

That time being 30 seconds. We ask them to let us know -

MR. KIRST: Your Honor, I apologize. I'm really
not trying to be difficult. Before we get into what they're looking for, I again ask for some foundation as to how it is known by this officer that that is an indication of alcohol consumption as opposed to my client -- the report indicated my client's on medicine, a bad knee, any way it's associated with alcohol consumption? That was the basis of my initial

objection. Before we get into what they're looking for, which may fit well under my client's behavior without admitting that it has, I need some -- I respectfully request some foundation that that is indicative of alcohol consumption.

THE COURT: Well, I think that's what we're getting at right now I'm assuming; is that correct, Mr. Zentz?

MR. ZENTZ: It is.

THE COURT: Okay. I'll --

MR. ZENTZ: What kind --

THE COURT: -- allow him to finish and we'll see if it satisfies.

MR. ZENTZ: Thank you, Your Honor.

BY MR. ZENTZ:

Q. Without the details of what you're looking for what kind of training do you get in the administration of this test?

A. It's approximately a one-hour training class that we had involving video and demonstration by -- by an officer on what we're looking for.

Q. And during the course of that training were you provided any information as to the usefulness of this test?

A. Yes, I was.

Q. What was that?

A. That officer who provided us that training stated that it would be-the swaying if an individual exhibited any swaying--

MR. KIRST: Your Honor, I'm sorry. I object to on the grounds of hearsay. I'm going to leave it at that as to what the officer told him during the training. If there's some literature or some treaties or something that would be admissible, that would be acceptable, but as to this hearsay (indiscernible) I

object.

THE COURT: Overruled.

MR. KIRST: Thank you, Your Honor.

BY MR. ZENTZ:

Q. All right.

A. That -- that an individual if -- if they were to sway somewhat in an exaggerated movement and not necessarily an exaggerated movement, but it's -- it basically is also a time perception check. You can look at

an individual and most normal individuals can stand there with their eyes closed, their head tilted back slightly and give you an estimate of 30 seconds. If an individual's body has been altered chemically or however, that would basically lead a normal individual not with that ability to perceive 30 seconds and also they would sway.

Q. So this is a one-hour training class you got approximately a year ago?

A. That's -- that's correct approximately a year ago with video and oral demonstration.

Q. Okay. Prior to June l0th, 1999, had you administered this test?

A. Yes, I have.

Q. And can you estimate how many times?

A. It would just be an estimate, probably 25 DUI cases each and every time since the training.

Q. So almost every time that you stopped a suspect of DUI you're using this test?

A. Almost every time, yes.

THE COURT: Excuse me, Mr. Zentz, I have two questions.

THE WITNESS: Yes, sir.

THE COURT: First of all who gave the training?

THE WITNESS: That was Officer Mark Schaible in our department.

THE COURT: And do you know what training he had in order to give this training?

THE WITNESS: Yes, Your Honor. He -- he was -- the training that I believe he has received was his background and experience while he worked in California with the police department back there, and I believe he is also a recognized drug expert, drug recognition expert.

THE COURT: And the second question is then this test doesn't specifically indicate alcohol but any type of -- of altering type of drug? It could be drugs as opposed to alcohol; is that correct?

THE WITNESS: Yes, Your Honor. Yes, Your Honor, it is used for both, drugs and alcohol.

THE COURT: Thank you. Mr. Kirst, do you have any questions you'd like to ask in reference to this, in reference to the test exactly?

MR. KIRST: Not on that issue.

THE COURT: Thank you. Sir, I'm going to allow the answers on the test.

MR. ZENTZ: Thank you, Your Honor.

BY MR. ZENTZ:

Q. Officer, you administered this test and you instructed the Defendant how you wanted it performed?

A. Yes, sir, I did.

Q. What did you tell him?

A. I told the Defendant basically I want him to stand in a position of -- it's a modified position of attention with your heels together, your feet together, arms down at your side, stand there and slightly tilt your head backwards keeping your eyes closed at all times. And then while you have your eyes closed and your head tilted back I want you to let me

know when you think 30 seconds has passed.
And that's part of the test there. While he's doing that with his head tilted back, his eyes closed and allegedly thinking to himself when-when 30 seconds may pass he's to tell me when 30 seconds has elapsed. And I'm observing any swaying or movement that he may be exhibiting during this time frame.
Q. And what did you observe with this Defendant?
A. There -- he kept opening his eyes. He wouldn't keep his head tilted back. There was some slight swaying and he estimated 30 seconds to be approximately ten -- well, ten seconds. At ten seconds he estimated that to be 30 seconds.
Q. And did you administer any other tests?
A. Yes, I did. I administered a walk and turn test.
Q. And have you been trained in the administration of that?

A. Yes, I have been.
Q. And when did you receive that training?
A. That training I received back in '91 when I attended the academy, the Las Vegas Metropolitan Police Department Academy.
Q. And how long was that training; do you recall?
A. Not off the top of my head, a full day for sure, a full day, plus there's ongoing training that we receive within our own department.
Q. And have you successfully completed all of the training?
A. Yes, I have.
Q. Okay. What is involved with that test?
A. The walk and turn test is basically an individual must

walk a line, an imaginary line or a line that is drawn on the pavement, taking nine steps heel to toe. The individual's got to listen to your instructions, too. What I basically do is I'll --I'll explain to the individual, I'll tell him that I'm going -- I'm going to go ahead and demonstrate and explain to you the walk and turn test. At the end of my demonstration and explanation I want you to ask me any questions as that point. If you have any questions at that point, I'll go ahead and clarify any -- any questions that you may have.
And basically I stand with the left foot on a line,

right toot in front of it, heel to toe, and then I walk heel to toe with my arms down at my side looking down at my feet counting out loud one to nine. I'll demonstrate a turn back around reversing course and also counting out loud looking at my feet, touching heel to toe counting back to nine again. And then what I'm looking for at that point is to see if the individual uses his arm for any balance, if he steps off the line, if he misses heel to toe, if he does an improper turn, or just for his general actions to see if he does anything. That's out of my instructions that I may have given him.

Q. And is that how you instructed the Defendant?

A. Yes, that is how I instructed the Defendant.

Q. And was there a natural line or was this an imaginary line?

A. This was an imaginary line.

Q. And do you recall how the Defendant performed that test?

A. The - - he started too soon prior to me even completing my instructions. Basically it's stand on that line with your heel to toe, Stand there. Watch me. Pay attention to what I'm doing. I'm going to demonstrate it to you. And then he wanted to start as I started. When I was walking and

counting out loud, and so that's -- that's

an indicator there. He starts too soon. He missed heel to toe throughout -- throughout the walk and the turn was an improper turn.

Q. Based on his performance what did you do, also?

A. What did I do also?

Q. After that.

A. After that, that was the last portion of that test. I requested that the individual do a one-leg stand test that's basically where you stand with one leg approximately, and the one leg can be of your choice. You stand with that leg approximately six inches off the ground, your arms down at your side. You look down at your foot and you count from one thousand one to one thousand thirty. He refused to do that.

Q. so based on that what did you do, also?

A. At that point in time I placed him under arrest for driving under the influence of either alcohol or a controlled substance.

Q. And what did you do after you placed him under arrest?

A. After I placed him under arrest I read him Nevada's implied consent and also Mirandized him.

Q. And did you give him a choice of tests?

A. Yes, sir, I did. I gave him a choice of either a breath or blood. He stated he would provide a sample of his breath.

Q. What'd you do then?

A. I transported him to Henderson City Jail.

Q. And at the jail what did you do?

A. At the jail I began an observation period of 15 minutes on the subject and in preparation of administering the breath

sample, and at that point in time after the 15 minutes lapsed I have a checklist that I went through, and after-after the 15 minutes lapsed I brought him up to the breath machine and administered a breath test.

Q. All right. Have you been trained in the administration of a breath test?

A. Yes, I have been.

Q. When did you get that training?

A. That also was probably in '94.

Q. And what kind of training was involved in that?

A. Traci Burch (phonetic) from -- from the lab in Las Vegas came and administered that training to us.

Q. What was involved in that?

A. That training involvement there was a full day approximately hour shifts or ten hour shifts. So it was a full day, a ten-hour class where she would bring in a couple of machines and then she would go through basically all of the literature that's provided on DUI and what

you're looking for, and the way the machine operates, the way the operator, the first line operator, is supposed to operate the machine. And then we had to do a test with the machine.

Q. And did you successfully complete that?

A. Yes, I did.

Q. Is there a certification or anything you get?

A. There's a certification that we're given, and there's also a training that we receive on a periodical basis to recertify.

Q. Based on -- well, okay, let's go back. In this particular case you administered the breath test?

A. Yes, I did.

Q. Were you able to get any successful readings?

A. No, I was not able to get any successful reading. He

basically would not pay attention to my instructions and everything as I would tell him how to blow into the -- into the machine. You know, I'd tell him what you need to do when the machine tells you it's ready it will say please blow. You need to provide a sample of your breath by sealing the small tube. it's about the diameter of a straw. Sealing your lips around that, taking a deep breath, sealing your lips around it and then blowing until you hear this tone, and you are to continue blowing until you hear that tone. He would not do that.

Q. So what'd you do when you were unable to get a successful reading?
A. After I was unable to get two successful readings I advised him that we would be withdrawing blood.
Q. And did he agree with that?
A. No, he did not agree with that.
Q. Did he resist?
A. He did not resist other than verbally, vocally telling us that the only person that could take his blood would be his doctor. And I advised him that we have a registered nurse here and we would be taking his blood to determine what his alcoholic or drug content may be.
Q. And were you present when the blood was drawn?
A. Yes, I was. We had to place him in a chair for officer safety to restrain him, and then the registered nurse on duty that night withdrew two vials of blood from his arm.
Q. After she drew -- drew the blood what did you do?
A. After she withdrew the blood I sealed the blood vials, placed them into a container and sealed it, and placed it in the jail refrigerator as evidence.

MR. ZENTZ: Your Honor, at this time the City's

going to offer declaration of Lois Howell (phonetic), a declaration of Traci -- excuse me -- Terry Perkins (phonetic), and the declaration of Brian Thomas (phonetic) from APL Labs relating to this case. If I can have them marked.

THE COURT: That's City's A,B and C?

MR. KIRST: Your Honor, I would not object to the admission of Terry Perkins and Lois Howell because that was properly noticed. However, the notice of extra witnesses did not indicate that Brian Thomas might -- his affidavit may be used along the lines of that of Terry Perkins and Lois Howell. So I would object to the admission of the Brian Thomas affidavit.

THE COURT: Mr. Zentz?

MR. ZENTZ: Your Honor, I'll just check real quick. Your Honor, it appears to me that we did notice the Brian W. Thomas forensic specialist APL Labs. This declaration may be used. That was filed August 10th and mailed to the Defendant because we didn't have notice that counsel is in the case.

MR. KIRST: That's correct. I -- I was not on the case. However, what I -- may we approach the bench?

THE COURT: Yes, sir.

(Thereupon, a bench conference was held.)

THE COURT: It appears from the notice that it was properly noticed from what I-the way I read it. Would you agree, Mr. Kirst, or not?

MR. KIRST: Was the -- yes, I would, Your Honor. I have no problem with that.

THE COURT: Thank you. City's A, B and C will be admitted.

(Thereupon, Plaintiff's Exhibits A, B and C were

marked for identification.)
MR. ZENTZ: Thank you, Your Honor.
BY MR. ZENTZ:
Q. Officer, did all these events you've testified to take place within the city limits of Henderson?
A. Yes, sir, they did.
MR. ZENTZ: I have nothing further of this witness, Your Honor.
THE COURT: Mr. Kirst.
MR. KIRST: Thank you, Your Honor.
CROSS-EXAMINATION
BY MR. KIRST:
Q. Did you ever have any direct communication with Mr. or Mrs. Jones?
A. No, sir, I did not.
Q. Were you informed by my client that he was a disabled vet?
A. Not to my recollection, no, sir.
Q. Is it -- I know you say not to your recollection.

A. I don't remember that he -- he said that, sir, no.
Q. You indicated on your DUI summary-
MR. KIRST: May I approach the witness, Your Honor?
THE COURT: Yes, sir.
BY MR. KIRST:
Q. I'm showing you what has been marked as Defendant's Proposed Exhibit No. 2. Do you know what that document is?
A. Yes, sir. This is the DUI summary that I filled out.
Q. Okay. You do recognize that as the one that --
A. Yes, sir.

Q. -- you filled out?
A. It's a copy of the one that I filled out.
MR. KIRST: Your Honor, I'd move for the admission of Defendant's Proposed Exhibit 2.
THE COURT: Any objection?
MR. ZENTZ: No objection.
THE COURT: No. 2 will be admitted.
(Thereupon, Defendant's Exhibit No. 2 was marked for identification.)
MR. KIRST: Thank you.
BY MR. KIRST:
Q. This indicates that he advised that he was taking medication for back and stomach problems; is that correct?
A. Yes, sir. That's what I wrote in the -- in the report --
Q. Very good.
A. -- based upon what he told me.
Q. Okay. I am now going to show you what is marked as Defendant's Proposed Exhibit 3. Do you know what that document is?
A. If this -- this is also the DUI summary. This is like page two of it. This form is a double-sided copy, and this is obviously a copy of the backside of this one.
Q. Okay. And does it -- does it also accurately depict what you filled out?
A. Yes, sir.
MR. KIRST: Your Honor, I'd move for the admission of Defendant's Proposed Exhibit No. 3.
THE COURT: Any objection?
MR. ZENTZ: None.
THE COURT: Three will be admitted.
(Thereupon, Defendant's Exhibit No. 3 was marked for identification.)

BY MR. KIRST:

Q. Now, I note at the top of what I've marked as 3 under sick or injured you indicated no; is that correct?

A. That's correct, sir.

Q. However, on Exhibit 2 it indicates that you were informed that there was a back problem; is that correct?

A. That's -- well, as you indicated there, stated that he was taking meds. I do not know that he actually has a back problem other than he told me he was taking medications for a back problem --

Q. Okay.

A. -- back and stomach problem.

Q. Thank you. Now, under vehicle's description it indicates that the subject, and we're referring to his vehicle, that it was parked in the driveway; is that correct?

A. Yes, sir, this pertains to vehicle impound whether we as a police agency impound his vehicle or leave it on the premises or where we come in contact with the vehicle. This indicates that it was not towed by any agency. It was left in his driveway.

Q. Very good. And does this accurately reflect the type of vehicle?

A. Yes, sir.

Q. And what type of vehicle is it?

A. It's a '94 GMC utility Yukon, license 440 Frank-Robert-Robert from the state of Nevada and it is white in color.

Q. Okay. Very good. The next section goes on to say officer observations, and number five we don't need to go in that I don't think, but in number -- let's do -- a number of boxes have been checked off --

A. Yes, Sir.

Q. -- and weaving within lane, weaving across lane, and

it looks like this may have been whited out. What's your interpretation of the one that reads --

A. That has been. That was whited out. That was in error.

Q. Okay.

MR. KIRST: And, Your Honor, we're referring to the one indicating lane straddling. It looked like it was filled out, but it looks like it was whited out.

THE COURT: That's fine.

MR. KIRST: And the officer's just indicated that was in error.

BY MR. KIRST:

Q. And then failure to obey signals also X'd out; is that correct?

A. That's correct.

Q. And that's under officer observation?

A. Those are under the officer's observations, yes.

Q. Did you observe any of those --

A. I did not.

Q. -- taking place?

A. These were what were relayed to me by the Henderson dispatch.

Q. May I ask you something?

MR. KIRST: May I approach the witness again, Your Honor?

THE COURT: Yes, sir.

BY MR. KIRST:

Q. Under gate it says staggering; is that correct?

A. That's correct.

Q. When you arrived at the scene were you the second officer responding?

A. Yes, I was.

Q. Where -- where was -- that was the sergeant that was already present at the scene --
A. That's correct.
Q. -- is that correct? Together with my client; is that correct?
A. He was there with your client. Your client was outside. I mean, they weren't -- you know, they were within close proximity of each other within-within probably two or three, maybe four feet away from each other, arm's distance away on the sidewalk.
Q. Okay. You were present when this map was drawn earlier; is that right?
A. That's correct.
Q. Can you please indicate in the portion in green what is already been drawn. Can you use the blue pen and indicate where you gave the field sobriety test.
A. I guess this depicts the individual's house.
Q. I think that depicts-
MR. KIRST: Counsel, does that not depict the vehicle in the driveway?
MR. ZENTZ: Vehicle in the driveway.
BY MR. KIRST:
Q. That'd be the vehicle in the driveway.
A. Vehicle in the driveway.
Q. And the testimony was the house was to the left of that I believe, and the driveway was on the right side of the lot. I'm going to go ahead and indicate where the previous testimony was for the house-
A. May I add to it?
Q. -- approximately.
A. Okay. Let me add to it just a little bit because it would be similar to that --
Q. Fine then.

A. -- because that's the driveway up in there. In front here is a sidewalk. My vehicle was parked right approximately here. The subject was administered a field sobriety test on this sidewalk here. It's the most level paved area that was in the area then.

Q. Okay.

THE COURT: Officer Brooks, would you put an "X" where you indicated the field sobriety test occurred in black.

THE WITNESS: It's along this sidewalk here, Your Honor-

THE COURT: Thank you.

THE WITNESS: -- in front of the subject's residence.

BY MR. KIRST:

Q. Officer, this may seem like an odd ball question. Do you jog?

A. Do I jog?

Q. Yes, sir.

A. Used to, not now.

Q. Good enough. When you were jogging, for any substantial distance?

A. That was years ago in my youth I should say, but I -- I used to run a couple of miles.

Q. Ever on a sidewalk?

A. Have I ever ran on a sidewalk?

Q. When you were in your jogging days would you jog on the sidewalk?

A. Sure. It's not my preference but I have before.

Q. Sure. And why would it not be your preference?

A. Well, because it's -- it's very, very hard. There's hardly any cushion or anything on that, and it's, you know -- I've never ran around a cul-de-sac, though, if that's what-

Q. No, no, no. I'm not going there. Have you ever had an opportunity to observe a rain storm in a neighborhood that has sidewalks?
A. Yes.
Q. Have you ever noticed that the water doesn't sit on the sidewalk?
A. No, it will run of f somewhat depending.
Q. Sure. You know why it doesn't sit on the sidewalk, why it runs off as you've described it?
A. Probably because of the grade being very slight.
Q. Thank you.
MR. KIRST: Your Honor, although, this is unusual I do it at this time, So far I've not had a problem. Beginning of this portion of my cross if there are any remaining witnesses I would like to invoke the exclusionary rule, Your Honor.
THE COURT: Do you have any other witnesses (inaudible)?
MR. ZENTZ: I don't, Your Honor.
MR. KIRST: If there's no other witnesses that would --
BY MR. KIRST:
Q. You've indicated my client refused the one-leg stand test; is that correct?
A. That's correct, sir.
Q. Did he indicate why?
A. I -- I don't really remember why he --- he refused that other than that was another test that I wanted to administer to him and he would not comply with my instructions to do that.
Q. Okay.
MR. KIRST: May I approach?
THE COURT: Yes, sir.
BY MR. KIRST:
Q. I'm showing you what has-I'm showing you what has

been marked as Defendant's Proposed Exhibit 4 --
A. Okay.
Q. -- and I've altered it a little bit to this extent. I've stapled a handwritten page and a typewritten page together.
A. Okay.
Q. Plus I've put some notes on the front. Can you tell me what Proposed Exhibit 4 is? Do you recognize it?
A. No. 4 is a copy of the narrative that I -- I wrote after the booking of the subject.
Q. Okay. And would the second page be merely the draft, the handwritten portion that ultimately gets typed into what is on page one?
A. The second page are they both the one in the same? These are two different documents here. They're same - -
Q. I've altered them --
A. Okay.
Q. -- by stapling them together.
A. Okay the second page is a declaration of arrest which we state probable cause to make the arrest - -
Q. Uh-huh.
A. -- which is a - a -- basically a very narrow and directed PC for review for the judge.
Q. Okay. Looking at page 1 --
MR. KIRST: First of all, Your Honor, I'd move for the admission of Proposed Exhibit 4.
MR. ZENTZ: No objection.
THE COURT: Four will be admitted.
(Thereupon, Defendant's Exhibit No. 4 was marked for identification.)
MR. KIRST: Thank you.
BY MR. KIRST:
Q. As you can see, I've circled --
A. Uh-huh.

Q. -- something in the top paragraph. It indicates that they had reported that the vehicle had almost struck the curb several times and they had driven through a traffic light; is that correct?
A. Uh-huh.
Q. Or does that -- am I correctly reading what is --
A. This is - this is what is a recap of what I was advised by Henderson dispatch, being advised they being advised by a citizen who was in following. Yes, sir, that is correct.
Q. Oh, and I understand you're not reporting that you witnessed this --
A. That is correct.
Q. -- but that is what your report indicates? That's what you were told by dispatch?
A. Yes, sir.
Q. You indicate that my client first requested a breath test as opposed to blood; is that correct?
A. Yes, sir, that
Q. Oh, I'm sorry, let's back up some. Do you recall where the street lights were going back to the
Diagram that you've --
A. Not -- not exactly the position of the street lights, no, sir, I don't. It was well illuminated though.
Q. You said you received some testing, Rhomberg?
A. Rhomberg.
Q. Yes.
A. I received the training.
Q. As far as that training were you told what might affect the accuracy of that test?
A. The part of the training that I recollect being told was that an individual, a normal individual who's not taking any alcohol or drugs, you know, would exhibit what would be seen as a capable of standing there with your eyes closed and

your head tilted slightly back.
Q. Were you told that prescription medicine could affect the test?
A. We were told that medication, not specifically prescription, but drugs legal or illegal could affect the test, yes, sir, depending on the type of drugs that an individual may have been taking.
Q. Fair enough. Were you told that physical ailments could affect the accuracy of the test?
A. Yes. That's part of the training; obesity, injuries or anything like that could affect the test.
Q. So if someone has a bad back, could that affect the accuracy of that test?
A. If they actually have a bad back, yes, sir.
Q. (Indiscernible) the intent of the question. i won't go into it again, but you testified as to the training you received to the walk and turn test, correct?
A. Yes, sir.
Q. Were you informed of the limitations or factors that may affect the accuracy of the walk and turn test?
A. Yes, sir.
Q. Would those same two criteria that we just covered, and let's cover them one at a time. First of all, medication rather even if drugs whether legal-
A. Yes, sir.
Q. -- or illegal could they affect that?
A. Obesity or other injuries or anything like that, yes, sir.
Q. And if in fact using your words a person had a bad back would that affect the ability to accurately perform the walk and turn?
A. It may, yes, sir.
Q. If an individual was on -- taking drugs whether legal or illegal could that affect the validity of the HGN test as well?

A. Yes, it could.
Q. Did you make any further inquiries as to what -- what you had been told about the medication for the bad back as to the nature of the bad back?
A. No, sir. I had asked him if he was under the care of a doctor or physician of any type and if he was taking any medications, and when he could not tell me what -- what type of medication it was, there was -- alls I could do was annotate in the fact that he verbally told me he was under the care -- or not under the care but taking medication.
Q. That was the only inquiry you made on that subject?
A. That's correct.
Q. You said you received a full-day training class on the breathalyzer; is that correct?
A. Yes, sir.
Q. It's basically an in-house or an in-house, full-day training, correct?
A. On more than one occasion, sir.
Q. That's true.
A. Yes.
Q. You indicated you had an update to make sure you (indiscernible).
A. That's correct.
Q. Is it possible that machines are ever broken?
A. I'm sure it's possible.
Q. Okay. When was Mr. Rost taken into custody, what time?
A. He was taken into custody - - I believe without referring back to the report I think it was 9:35 when I placed him under arrest.
Q. Okay. If I-let me show you again-
MR. KIRST: If I may approach, Your Honor?
THE COURT: Yes, sir.

BY MR. KIRST:
Q. -- Exhibits 2 and 3. Does that help you to give us a definite time?
A. Yes, it does. The date and time of the arrest was 6/10/99 at 213$ hours.
(Colloquy off the record.)
THE CLERK: Oh, he's got the A, B and C.
THE COURT: A, B and C, yes. Let's take two minutes.
MR. KIRST: Thank you.
(Thereupon,recess was taken.)
MR. KIRST: I thank you very much for that, Your Honor. We'll --
THE COURT: Go on and continue, Mr. Kirst.
MR. KIRST: May I approach the witness,Your Honor?
THE COURT: Yes, sir.
BY MR. KIRST:
Q. I'm showing you what has been admitted as the City's Exhibit No. A. Now, does that indicate what time the blood draw took place?
A. This is the blood draw declaration. It shows that on 6/10/99 at 2240.
q. So how much of a time difference -- and first of all this took place after the -- well, refer to is as the failed breathalyzer test?
A. Right, this would take place after that.
Q. Okay. How long after the arrest, after the-I should say after the control of the vehicle did that blood test take place? And I can give you back Exhibit 2 and 3 if they would help you.
MR. ZENTZ: I'm going to object to the question because I think that's been established through Sergeant

Vadasy when he saw the vehicle when he -- when he made contact with the Defendant.

THE COURT: Yeah. I'm not sure this officer can answer the question as asked. He could -- he could give you a time for when he was placed under arrest or when he first contacted him and tell. But he wasn't driving when -- when he pulled up, so.

MR. KIRST: Right.

BY MR. KIRST:

Q. So that exhibit is -- the time set forth on that exhibit is after the failed breathalyzer; is that correct, after the - - when I say failed, I mean - -

A. It's-

Q. -- we were able -- you were unable to get a successful breathalyzer.

A. This -- this happens after the breathalyzer so and it indicates that the blood was drawn at 2240 hours.

Q. Okay. Thank you very much.

MR. KIRST: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. KIRST:

Q. I'm showing you what has been marked as Defendant's Proposed Exhibit No. 5. Can you please tell me what that is.

A. Okay. That is the printout, a copy of the printout of the intoxalyzer.

Q. Do you recognize the signature on that?

A. That's my signature down at the bottom.

Q. Thank you.

MR. KIRST: Your Honor, I'd move for the admission of Defendant's Proposed Exhibit No. 5.

THE COURT: Any objection?

MR. ZENTZ: No objection.

THE COURT: Five will be entered.
(Thereupon, Defendant's Exhibit No. 5 was marked for identification.)
MR. KIRST: Thank you.
BY MR. KIRST:
Q. So attempts were made to have this breathalyzer test administered?
A. That's correct.
Q. Did you attempt to obtain a second machine to administer the breathalyzer test as requested by Mr. Rost?
A. Mr. Rost never requested a second machine. There wasn't a problem with the first machine.
Q. Didn't ask if there was a problem or not. Did you give him the opportunity-he had already made a request for the breathalyzer; is that correct?
A. That's correct, sir.
Q. Did you attempt to get a second machine to determine whether or not there was a problem with the machine you were using?
A. No, I did not.
Q. Thank you. I -- believe it or not I will get you out of here very shortly, but I'm going to ask you for one more quick drawing if I could. Referring to Defendant's Exhibit 4 and I'll read this to you and tell me if that's familiar to you and if it is accurate. After two attempts I demanded that he provide -- I demanded that he
provide a sample of blood. Be stated that only his doctor could take his blood. Then you say he was placed in the restraint chair?
A. That's correct.
Q. Could you please tell me what the restraint chair is?
A. It's a chair to keep a subject from flailing out or fighting with officers in a humane way to keep them from not

only injuring theirselves but other officers that would be around them.

Q. Fair enough. I'll -- can I ask you to please illustrate for me this room where -- where the restraint chair is if you could. So you can do -- start with the basic outline of the -- where does this take place at?

A. This is a portable chair, so it can be any room.

MR. ZENTZ: Your Honor, I'm going to object to relevance (indiscernible)

THE COURT: What -- what is the relevance, Mr. Kirst?

MR. KIRST: It is -- and I realize the statutory -- statutory provisions. I'm afraid if I explain the relevancy that may interfere. If I can be allowed just a very small amount of latitude in this and maybe dispense with the drawing for now? I'm afraid if I explain the relevance-

THE COURT: Go ahead, sir.

BY MR. KIRST:

Q. Rather than draw the picture, you say a portable chair?

A. Yes, sir. It can be moved about any room within the facility, the detention facility, the jail.

Q. Very good. On that night when Mr. Post was in the chair where was it -- is that the same room where the evidence refrigerator is?

A. No, sir.

Q. Were you present when the blood was being drawn?

A. Yes, I was.

Q. Who drew the blood?

A. The registered nurse on duty. The nurse that's on duty there at that evening. I -- I have -- the only time I have contact with the nurse, so I couldn't tell you the name without referring back to the report, Your Honor-

Q. That's fine.
A. -- but -- but the nurse. The - - the nurse that's on duty at the jail at the time of this incident after Mr. Rost did not want to provide the sample.
Q. Well, fair enough. I'll not attack the fact that you don't know her name. I can certainly-
A. Okay.

Q. -- understand that. Your report -- and I'm referring -- I shouldn't say report. Referring to Defendant's Exhibit No. 4 it indicates there were two bottles of blood that were drawn; is that correct?
A. That's correct, sir.
Q. Did you assist her in any manner whatsoever in obtaining that blood?
A. I observed, sir, while it's being done.
Q. After she had completed obtaining the first vial what happened to that first vial while she was getting the second vial?
A. It's the first vial, that vial is given to me because I'm the officer that has to maintain custody of the samples taken from -- from the subject and seal it and place it in this container here.
Q. So she gave it to you while she gets the second vial; is that correct?
A. That's correct.
Q. When she got done with the second vial what happened to it?
A. That's given to me also.
Q. What did you do with it at that point?
A. I also sealed that vial.
Q. Did you see where the vials originated before the nurse had them?

A. The vials are given to me in this container, sir; that is sealed and I have to break the seal to obtain the vials out of that to give them to the nurse. It's a sealed container when it's given to the officer.

Q. After she gave them back -- okay. I'll withdraw that question. What did you do with the first vial while you were waiting for the second one?

A. I hold that vial.

Q. Did you remain right there at the restraint chair?

A. Yes, sir.

MR. KIRST: I have nothing further of this witness, Your Honor.

THE COURT: Redirect.

MR. ZENTZ: Just a couple, Your Honor.

REDIRECT EXAMINATION

BY MR. ZENTZ:

Q. Officer, had the Defendant told you he was a disabled vet would you have noted it?

A. If -- if he had told me that, I may or may not have, sir, because it had no bearing on this issue.

Q. Okay. Secondly you were asked several questions about whether a prescription medication or other physical factors would affect the performance on various tests that you performed. Would the consumption of alcohol also affect someone's performance?

A. Yes, sir.

Q. And how many instruments, breath testing instruments are there at the jail?

A. Just one, sir.

Q. So if that one was not available, what would you have done?

A. We go to the blood draw.

MR. ZENTZ: Nothing further, Your Honor.

THE COURT: Nothing further?

MR. KIRST: No. No recross, Your Honor. Thank you.

THE COURT: Thank you, Officer Brooks.

THE WITNESS: Yes, sir.

MR. ZENTZ: With that, Your Honor, the City will rest.

MR. KIRST: Court's indulgence for just one moment?

THE COURT: Yes, sir.

MR. KIRST: Thank you, Your Honor. Your Honor, we would rest at this time as well, Your Honor.

THE COURT: Thank you.

MR. KIRST: However, prior to any closing argument at this point I would move to dismiss this case, Your Honor. As you know the entire -- I shouldn't say the entire. Ninety-nine percent of what you've heard about today took place in a location as has been testified to by both officers at 831 Harbor Beach Court. I would note that the criminal complaint in this matter indicates the incident or a portion of this incident took place at a location referred to as 731 Habor Beach Court.

I would move to dismiss on the insufficiency of the Plaintiff that inaccurately and in no way has been tied to anything that any of the officers or witnesses have testified to here today.

THE COURT: Mr. Zentz.

MR. ZENTZ: Your Honor, my complaint says 831 Harbor Beach Court, states all of which occurred while traveling southbound on U.S. 93 to Lake Mead and Water, continuing to Pacific and Horizon and subsequently to 831 Harbor Beach Court.

THE COURT: Well, mine says Habor, H-A-B-O-R.

MR. KIRST: Exactly instead of Harbor.

MR. ZENTZ: Your Honor, I believe that -- that's simply an error of typing. Mine says Harbor, H-A-R-B-O-R and, you know, I - - certainly the City would move to amend that. That's merely a clerical error and I don't believe that it's a factor in the defense of this case.

MR. KIRST: Your Honor, I would object to an amendment at this point. The state is closed - excuse me -- state I apologize. The City is closed at this point. We would object to any amendment of the complaint at this point. This is how the matter was-was pled and incorrectly and in no way tied to any of the evidence that has been heard here this morning.

THE COURT: I do believe it's just a typographical error and I don't find it significant. I'm going to allow it to be amended to Harbor, H-A-R-B-O-R.

MR. KIRST: Thank you very much, Your Honor.

THE COURT: You're welcome, Closing argument.

MR. ZENTZ: Your Honor, I believe the evidence has been presented today is that the police received a 911 - - excuse me - - received a dispatch from a civilian that was following a vehicle that was operating in an erratic manner. The description of that vehicle was a white vehicle, a white truck. Also, provided to the police at that time was a license plate.

Officer -- excuse me -- Sergeant Vadasy responded to the address of the registered owner of that white -- or that vehicle. When he gets into the area he sees that vehicle or a vehicle, excuse me, traveling. He sees it pull into 831 Harbor Leach Court. He makes contact. It's the vehicle that they were reported to look for.

And when he makes contact with the Defendant he observes that the Defendant has an odor of an unknown alcoholic beverage emanating from his breath or person and

he simply asks him to stand by and he observes that the Defendant is swaying while he's standing.
Officer Brooks responds to the area. Re makes contact with the Defendant. He observes that the Defendant had bloodshot watery eyes, had an unsteady gate, there was a moderate odor of an unknown alcoholic beverage emanating from his breath or person. The Defendant admitted to the officer of having consumed at least two beers prior to driving. It states also that he takes medication and tells officer that that medication -- although he wasn't -- he wouldn't identify what the medication was he indicates that he's not supposed to drink while he's doing it.
Officer Brooks performed a series of field sobriety tests with the Defendant. The Defendant attempts three of the four tests that the officer asks him to participate in. Defendant's performance indicated to the officer that the Defendant was under the influence of an alcoholic beverage at that time and possibly also the medication that he was -- he indicated.
He was placed under arrest at that time. He's transported to the Henderson City Jail. He's placed under the -- the call went out at 9:20 p.m. He's placed under arrest at 9:35. He's transported to Henderson City Jail where after a few minutes he's -- a blood test was drawn at 1040 p.m., a little more than an hour after the time that the Defendant was made -- or reported to be driving and eventually made contact with.
Your Honor, based on the evidence presented today we've -- the City's proven beyond reasonable doubt that the Defendant was in fact operating a motor vehicle while under the influence of alcohol. That blood test shows that the alcohol level of the Defendant was 0.18 percent and I believe that we've proven the case beyond a reasonable doubt and I ask for a finding of guilty.

THE COURT: Thank you. Mr. Kirst.

MR. KIRST: I would respectfully submit, Your Honor, that it's not that simple. With all due respect to opposed counsel and the police officers I have no problem with them as individuals. I -- I've probably seldom seen such a trampling of constitutional rights.

We don't have a chain of events leading up to this arrest where the officer observed any - - the testimony was that there was no weaving seen by any officer. There was no erratic driving seen by any officer. There's been nothing whatsoever to in any way, shape or form rights to probable cause or reasonable suspicion that there was a DUI going on at this point.

And why I say I feel that this is a -- one of those horrible cases of an abuse of constitutional rights is this. We've got hearsay on hearsay on hearsay. What we have of all the individuals were here today we have some individuals who call on-call on a cell phone. The testimony from both-both officers was that neither of those officers ever spoke directly to Mr. Jones. That in and of itself would have been hearsay, but we don't -- we can't even get that far. The next step we have is the Jones talking to a dispatcher, and now finally the dispatcher talking to the police officers.

I think that's why we have these constitutional rights and these rights to face our accusers and that's why we have to have probable cause, and by chance sure enough I -- how I can illustrate that to Your Honor is we have the witness statement Mr. Jones indicating that he almost ran a stoplight, but he stopped. How does that end up in Exhibit 4? Well, he's obviously a good man, but how does that end up on the report that he ran a red light?

That's why we can't do these things. That's why this isn't Russia. That's why we have to have probable cause or a

reasonable suspicion. That's why we don't let people make blind phone calls such as the days of Hitler to turn people in. We want probable cause. Maybe in a particular situation maybe we decide well, maybe I think this person's guilty, but -- and I'm not saying you should or do, but we've got to protect the constitution. If somebody maybe we're not comfortable acquitting comes along, but in order to protect that constitution and make sure that we have followed through on the rules and the law to protect all of us as a nation we have to do that, Your Honor. And that's why I say this case is a horrible abuse, not because anybody was being bad, but because under these facts with all this chain of communications this is the sort of thing that we -- that we need to protect, Your Honor.

May I read you to you from Stewart (phonetic) versus State, which is 94 Nev. 721, and I do give you a direct quote, Your Honor: the police officer must be able to point to specific and articulable facts which taken together with rational inferences from those facts lead the officer reasonably to conclude in light of his -- in light of his experience that criminal activity may be afoot. Well we heard nothing from the sergeant as far as his experiences tying this case together. All we got from him was I got a call from dispatch. It came from somebody else. That's why I showed up there. Nothing was ever observed in the way of any sort of erratic driving or any sort of behavior that in any way gives rise that that's sort of probable cause or reasonable suspicion, Your Honor. I would object and again and I've looked in Franco (phonetic) versus State in criminal cases the statement of a nontestifying hearsay declarant is only admissible under the -- well, let me back off of that argument, Your Honor.

We then can move to the -- to the report and the field sobriety test. We have right in the report, Your Honor, that there is --

that my client, Mr. Rost, was taking medication for a bad back. Yet nonetheless we proceed with the field sobriety test, and we do have testimony that a bad back would in fact -- could, I should say -- could in fact affect the results of a test. We have further testimony that the legal prescription medication, which is also referenced in the report, could in fact lead to problems with any other test including the HGN, Your Honor.

What I would say is again we don't have probable cause. There's no reasonable suspicion in this case. He -- I think that goes to the report does in fact reflect the bad back and does in fact reflect the medication. We don't have what we need in this case to get to the arrest. We don't have what it takes to get into the-into the office in custody for the breath test, which ultimately became the blood test.

Again, staying with the field sobriety test for a moment, and I ask Your Honor to take judicial notice of it. And why I asked the jogging (indiscernible) to witness, the testimony was -- and I'd ask you to take judicial notice of it. The sidewalks aren't flat. They're designed at an angle to drain water, Your Honor. That's why they don't puddle up. And the officer did say that was the best available surface. That doesn't mean it was a good surface. It doesn't mean it was a sufficient surface that's going to -- surface that's going to allow for an appropriate field sobriety test. Again, Your Honor, we don't have in this case what we need in order to give rise to that reasonable suspicion without probable cause for the custody.

Next, Your Honor, I would like to address the breath test. My client by statute has a right to choose. He did choose. We have an admitted exhibit indicating the printout showing that he tried to do that. We have a testimony that he wasn't asked if he wanted to have a different machine. The fact remains that he made his choice. No efforts whatsoever were made to

comply with that request beyond the initial breath test. At that point, and I would ask Your Honor to recall the testimony of the statement where the officer said I then demanded, not request, I then demanded that he take a blood test. Your Honor, again, we have a constitution to guide us and to provide protection. We have statutes so we have rules that can be complied with. The statute gives my client the opportunity to choose between a breath and a blood test. He made the choice in this matter for the breast test. He was denied that choice without other attempts being made to comply.

When we look at the -- listen to the testimony of the sergeant, and I apologize for not having his name at the tip of my tongue, but when we look at the time frames involved and the time that we get through the breath test and by the time we get to the blood test it had only been an hour and 20 minutes. We have time, Your Honor, to comply with my client's request to give the breath test. The Henderson Police Department does not have the right to say well, if the breathalyzer was broke, our next step is to go to blood. That's not what the statute says. The statute doesn't say if it's broken, then we're going to go to blood. That's why we have the statute, Your Honor. Finally, Your Honor, I'd like to as to the chain of custody, and I realize that the affidavit from the nurse had been admitted. However, I don't think that that by statute provides conclusive proof of what has taken place. And here's what I'm driving at. She does indicate in her affidavit that she had sole custody and control of the evidence, the evidence being the vial. The testimony from the officer, the arresting officer who was present at the time of the blood draw, totally refutiates that, totally indicates that that is not

correct. What we have here is nurse who inserts the needle,

gets her first vial. She by the testimony of the officer hands the vial to him, goes back to work. Her affidavit saying she is in exclusive control, Your Honor. She's not. She is back to work on this and you know, she's back to work on the second vial. It is out of her control the first vial by the testimony of the officer. When she concludes with the second vial she gives it to the officer. He indicates that he initialed both of those vials. Point being she was not in exclusive control and that is all from this case that cannot be surmounted by the City no matter what they say. We have the opposite testimony that we do not have exclusive control and possession by the nurse despite the fact -- it's not an affidavit from her -- a declaration, Your Honor.

We have the testimony from the officer that he put it in the refrigerator, but no -- and no point today did he testify that it was in a locked refrigerator. We do have the -- and I'll leave it at that. His testimony today was not I put it in the refrigerator, locked the refrigerator. His testimony was today I took it and put it in the refrigerator. Again, we have rules. We have procedures. We have these obligations that we must meet 'cause we have to protect everybody. We have to protect the citizens. These rules and regulations are there for a reason. They were not followed through in this case. At least we have not had the testimony here today to show that they were followed through, and as to the vials, it wasn't followed through. It's not a matter of not having the nurse here today. It's a matter of direct contradictory testimony that it was not in her sole possession and custody.

And for that reason, Your Honor, this case must result in acquittal. If I may have the Court's indulgence for one moment and, Your Honor, I rest at that point. Thank you.

THE COURT: Thank you. Mr. Zentz.

MR. ZENTZ: Your Honor, the officer doesn't need

probable cause to stop a vehicle. He needs reasonable suspicious. In Sonfield (phonetic) versus the state of Nevada there was an anonymous tip or a tip from a bartender in that case where they describe the driver of a vehicle, a vehicle, and gave a license plate to a dispatcher. That information was relayed to officers out in the field. Officer out in the field sees a yellow Volkswagon with a roof rack and California license plate which matched the number he was provided. That's the same situation we have in this case, Your Honor. That was proved by the Nevada Supreme Court in 1998. We need probable cause to make an arrest, not to make a stop of the vehicle. They had probable cause. They had the information that they were provided by dispatch that this person was driving erratically. Sergeant Vadasy sees the vehicle, doesn't see any erratic driving, but he does see the vehicle traveling on a public roadway, makes contact with the Defendant, who was the driver of the vehicle. He sees him exit the vehicle. He's afforded an opportunity to do a series of field sobriety tests. The Defendant attempts each of those tests; however, he cannot perform them successfully. He's transported to the Henderson City Jail where he's given the opportunity to take the breath test, but as you can see by the breath strip that was provided by the Defense was insufficient samples, insufficient samples. And I believe also included in Defense's stack of exhibits is a police report where it indicates that in the course of trying to give those breath samples he spit in the officer's face. So NRS 44.282 or paragraph 5 states: if a presence of a control substance in the blood of a person is an issue, they may direct him to take a blood test or urine test or both in addition to the breath test. As illustration, Your Honor, had the officer chosen when the Defendant told him I've got a bad back and I'm taking medication, he didn't have to give him a choice of test. He gave him the choice. The Defendant chose

not to properly perform the test.
The blood test as far as the chain of custody goes declaration of Lois Howell states I kept the sample in my sole custody and control, substantially same condition as was when first obtained it until on June 10th of '99; I delivered the sample to Officer Brooks. That's totally consistent with what Officer Brooks testified. She took the samples. She took the vial out, handed it to him, took another vial out, handed it to him. That's it, Your Honor. That's how it's done. That's the procedure. The officer testified that he put it into the refrigerator. Testimony or the declaration of Terry Perkins says that she took it out of the refrigerator into a locked refrigerator.
Your Honor, I believe the City has provided substantial evidence that the Defendant was in fact under the influence of alcohol or intoxicating liquor while operating his vehicle and I'd ask for a finding of guilty.

MR. KIRST: Very briefly, Your Honor, the testimony --

THE COURT: Go ahead, sir.

MR. KIRST: The testimony of the officer-of the sergeant rather was not that the car was running; that he saw the headlights and the-and the taillight, never heard the vehicle running. So I throw that out. But more importantly I'd like to address Sonfield and then I will sit down. I am sure that counsel will not disagree that the distinguishing factor of Sonfield was yes, the officer got the description of the VW; yes, the officer got the license plate. However, what counsel fails to mention to Your Honor is then the police officer sees this vehicle, turns on his lights, follows him and the VW fails to pull over for a lengthy period of time. Finally, the VW pulls into his apartment complex, shuts off, and then he gets out. We don't have that here. We have nothing placing my client

in that vehicle. I think that Sonfield is completely distinguishable, Your Honor.

THE COURT: Thank you.

MR. ZENTZ: One last thing, Your Honor. Sergeant Vadasy testified he saw the vehicle as it turned into Harbor Beach.

THE COURT: Gentlemen, both of you sit down. I heard the testimony. Thank you. Mr. Rost, would you please rise. What we have here is something very unusual. We have a citizen that's willing to get involved in a case, and Mr. Jones I congratulate you for that. Not only was he willing to get involved, he was willing to follow the vehicle, call the police department on his cellular phone, relate what he was observing. He was-he was willing to give his name, his address obviously because he was also willing to come here and appear in court today and testify.

What Mr. Jones observed was certainly sufficient grounds to make the stop. If the officers observed the vehicle and didn't make a stop, I would say they'd be negligent. Sergeant Vadasy observed the vehicle traveling on a city street with the Defendant in actual physical control. A field sobriety test was given and certain observations were made by Officer Brooks that give him grounds to make the arrest. That observation of driving occurred at approximately 9:20 p.m.

The Defendant was given the opportunity to give a breath test and the statute says if there is a breath test available and the Defendant wishes a breath test, then no blood would be given. However, regardless of whether the machine was broken, or whether the Defendant provided an insufficient sample at that time, there was not a breath machine available, they had the right to draw blood. That blood was drawn within two hours of driving and measured above a .10. The

Defendant is guilty of the charge.
Mr. Rost, because your blood alcohol level was .18 or higher I'm not able to sentence you today. I'm required to send you to an alcohol assessment center prior to sentencing to determine if you're an abuser of alcohol. Let's have that completed by October 26th and we'll do sentencing on that date at 10:00 a.m.

MR. KIRST: Thank you very much, Your Honor.

THE COURT: You're welcome. The exhibits in this case will be maintained in the clerk's file.

(Thereupon, the proceedings were concluded.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

"s/ Mona Shield Payne, 1/29/00
Mona Shield Payne, Transcriptionist
Date

DR# 99-11844
DATE: 06-10-99
TIME: 2130

STATE OF NEVADA)
) SS: HENDERSON
COUNTY OF CLARK)

I, Kelly Jones, date of birth 9-20-57
Social Security No: _____ Residence Address_____
_____.
Business Address_____Phone_____
do hereby make the following true statements to OFC. "S/ N. Halliday "#384.
of the Henderson Police Department, of my own free will. There have been no threats, or promises of immunity or reward made to me to make this statement. It is further understood that this statement may be used either wholly or in part as evidence in a Court of Law. I can read this and write the English language.
We noticed the driver swerving all over the road at about Jokers Wild. The driver almost hit the curb several times. The driver almost ran the red light at Water and Lake Mead, the driver passed a car almost hit kids on the side of the road. We followed the driver all the way to Horizon and 95 freeway.

"s/ OFC N. HALLIDAY" #384 "s/ KELLY J."
Witnessing Officer Signature

DR# 99-11844

ARREST# _____

HENDERSON POLICE DEPARTMENT

DUI[SUMMARY

Suspect Name (Last. First, Middle) D.O.B.: SS#
Rost, Ronald David 013047 520521520
Date: 061099 Time of Stop:2120
Witness :Sgt. R. Vadsy #310 Traffic Flow: X Light; Medium; Heavy.
VEHICLE DESCRIPTION, Vehicle Impound Yes; X No
Year 94; Make GMC; Type Utility; Model Yukon; License 440FRR; State NV; Color WHT;
Tow Agency N/A; If no. released to: subject pa in driveway.
OFFICER OBSERVATIONS
Driving observations of subject:
Excessive Speed; Unusually Slow Speed;
Following Too Closely; Lane Straddling;
x Weaving Within Lane; X Weaving Across Lanes ;
Struck Curb or Median; X Failure to Obey Signal/Sign;
Unusually Wide Turn; Stopped/Stalled in Traffic Lane;
Wrong Way Driver; Involved in Traffic Collision.
Other:
Eyes: X Bloodshot; X Watery; Normal. **Speech**: Slurred; Mumbled; Confused; X Slow; Fast; Normal. **Clothing**: WORK; Disarranged; Soiled; X Normal Dirty. **Gait**: X Staggering; Stiff; Falling; Normal. **Alcoholic Beverage Odd**: Mild; X Moderate; Strong; None.
Demeanor: Polite; Cooperative; Carefree; X Indifferent; Excited; Talkative; Antagonistic; Cocky; Aggressive; Hostile; Combative; Sleepy.
Field Sobriety Test : Refused (recorded statement); Not Given (List Reason); Satisfactory; X Unsatisfactory. Given by:

J. Brooks 607; Witnessed by: R. Vadasy 310;
Statements/Notes: N/A.
Miranda/Implied Consent: Miranda X Yes; No.
Given by: J. Brooks 607; Witnesses by R. Vadasy 310 Implied consent X Yes; No. Given by: J. Brooks 607; Witnesses by R. Vadasy 310
Test Given: X Blood Results: Pending; x Breath Results: Deficient; Urine Results:. Refused (Recorded Statement) Statement:.
Location Sample Obtained: HAB JAIL. Time Obtained: 2240 hrs. Person Obtaining Sample: R.N. Lois Holland Howie.
List Medication/Suspect Drugs (Include Last Ingestion) None; Advised he was taking meds for back an stomach problems but could not tell me type. Stated not to drink when taking.
Light Source: X Headlights X Streetlights Daylight Dawn/Dusk.
Surface: X Level Grade X Paved Dirt/Gravel
Previous DUI Convictions: Yes; X No.
List Conviction Date and Court.

Date/Time of Arrest: 061099/2135
Reporting Officer: J. Brooks 11278
P# 607
Division: Patrol SA

Dr# 99-11844

Arrest #____

HENDERSON POLICE DEPARTMENT

Standardized Field Sobriety Checklist

Suspects Name: Rost, Ronald David. DOB 013047

SS# 520521520

Lighting: X Headlights; X Streetlights; Daylight; Dawn/Dusk.

Weather: X Clear; Windy; Cloudy; Raining.

Surface: X Level; X Paved; Grade; Dirt/Gravel.

Sick or Injuried? Yes; X No. **Diabetic or epilepdc?** Yes; X No. **Do you take insulin?** Yes; X No. **Using medicine or drugs?** X Yes; No. **Under Care of Dr. Or Dentist?** X Yes; No. **Do you have any other physical defects?** Yes; X No. **Were you driving the vehicle?** X Yes; No.

When did you last eat? Describe: 6 hours prior to incident (cheeseburger).

What have you been drinking? 2, 12 oz. Heinkein **Where?** Said El Dorado. **How much?** 2 Beers. **Do you feel the effects?** Not asked.

Time of first drink? Could not advise **Time of last drink?** S/A **When did you sleep last?** Not Asked **How Long?** Not Asked

Are there any mechanical problems with your car? Not Asked. **What time is it now?** 10 P.M. **Where are you now?** Not asked.

HORIZONTAL GAZE NYSTAGMUS

Lack of Smooth Pursuit: X Left; X Right. As the eye is moved from side to side , it should normally more smoothy.

Distinct Nystagmus at Maximum Deviation: X Left; X Right. When the eyeball is held as far to the side as possible for several seconds, it will normally be steady.

Onset of Nystagmus Prior to 45 Degrees: X Left, X Right. As

the eyeball is drawn toward the side, the impaired subject will exhibit observable Nystagmus before a 45 degree angle.
Administered by: /S/ J. Brooks 607.
Other:_____. **Prescription Lenses:** Yes; X No.
ROMBERG: Satisfactory; X Unsatisfactory; Refused; Lost Balance; X Swayed; X Opens Eyes; Leaning; Estimated 10 as 30 sec. **Additional Observations:** would not keep head titled back.
WALK AND TURN: Satisfactory; X Unsatisfactory.
Instruction Stage: X Cannot keep balance; X Start too soon.
Walking Stage: Stops Walking: X 1st 9 steps; 2nd 9 Steps. Missing Heel/Toe; X 1st 9 steps; X 2nd 9 steps. Steps Off Line: 1st 9 steps; 2nd 9 steps. Raises Arms (6" Allowed): X 1st 9 steps; X 2nd 9 steps. Number of steps: 1st 9 steps; 2nd 9 steps. Improper Turn: X. Total (maximum 8) 6. **Additional Observations:** Never touched heel to toe.
ONE LEG STAND: Satisfactory; Unsatisfactory; X Refused; Start too soon; Sways While Balancing; Uses Arms to Balance; Hopping; Puts Foot Down; Total (Maximum 4)____. **Additional Observations:.**
Additional Tests Given: None.
Date/Time of Arrest: 061099/2135
Reporting Officer: /s/J. Brooks
P# Emp#:11278/607
Division: Patrol SAE

NARRATIVE SHEET
PAGE 4 of 6 DR# 99-11844

(1) Narrative
(2) Describe physical evidence, location found, and disposition

1. On Thursday, 061099, at approximately 2120 hours I was dispatched to the vicinity of Horizon and Horizon Ridge reference a citizen reporting that they are following a white GMC Yukon bearing Nevada 44OFRR. The citizen advised that they -
were behind this vehicle from S/B US 93 (Boulder Highway) across from the Jokers Wild Casino. They advised tat the vehicle was swerving within and crossing over the travel lane. They also reported that the vehicle had almost smack the curb several times, and that it had driven through a red traffic signal at Water Street and Lake Mead without stopping. The citizens advised that the vehicle continued on Pacific to Horizon and almost stuck children that were on the side of the road.

Sgt. R. Vadasy #310 went to the area in an attempt to locate the driver. Sgt. Vadasy did locate the vehicle and driver as he was pulling into his driveway at 831 Harbor Beach Court. Upon my arrival Sgt. Vadasy was detaining the driver, identified as Ronald David Rost (013047), in front of his patrol unit at 831 Harbor Beach Court. I conducted a field sobriety test (see DUI summary) and subsequently arrested Rost for driving under the influence of alcohol/controlled substance. Rost advised that he was taking medication, which was labeled with the warning to not consume alcoholic beverages or operate a vehicle. I had asked Rost where he was coming

from and he stated Henderson. When I asked him again he advised the El Dorado Casino. The citizens stated that they did follow him from the Jokers Wild Casino on Boulder Highway.

Officer N. Halliday #384 contacted the citizens who had observed and reported the drivers action and did obtain two written statements from Kelly Jones (092057) and Sandy Jones (102359).

I transported Rost to the jail where he attempted to provide a sample of his breath, but then would quit and blow his breath and spit in my face. After two attempts I demanded that he provide a sample of blood. He stated that only his doctor could take his blood. He was placed in the restraint chair and strapped in for officer safety. It should be noted that Rost did not resist and sat in the chair voluntarily as the nurse (Lois Howie) took two vials of his blood from his right arm. I then impounded the samples in the jail refrigerator.

2. Two vials whole blood, Rost' right arm. Impounded as evidence.

HENDERSON POLICE DEPARTMENT
BLOOD DRAW DECLARATION

STATE OF NEVADA)
COUNTY OF CLARK) ss

Howie, Lois Holland (exactly as on license) being first duly deposes and says:

THAT I am a Registered nurse (occupation) employed by EMSA Correctional- Henderson (employer)

THAT a regular part of my duties is the withdrawing of whole blood samples from persons and I am authorized to do so by:

Nevada Department of Human Resources
X Nevada State Board of Nursing
Nevada Board of Medical Examiners

THAT on 6-10-99 (date) at 2240 o'clock p.m., I withdrew a sample of blood in a medically accepted manner, and that I withdrew the sample using no alcohol solutions or alcohol-based swa from a person known to me as Ronald Rost D. (nar) under Henderson DR # 99-11844 ; and

THAT I kept the sample of whole blood in my sole custody or control and it remained in substanually the same condition as when I first obtained it until on 6-10-99 (date) I delivered the sample to Officer Brooks (name of person) of the Henderson P.D. name of law enforcement agency.

I Lois Holland Howie (print declarant's name) do hereby swear under penalty and perjury that the foregoing is true and correct. /s/ J.R. Brooks Witness-print and sign P# 607 /s/ Lois Holland Howie R.N.
Declarant's Signature Title Date
Registered Nurse 6-10-99 RN 23605 License Number

AFFIDAVIT OF EVIDENCE CUSTODY
STATE OF NEVAD)
) ss: ROST, RONALD D
COUNTY OF CLARK)

I, Terri Perkins, being first duly sworn, depose and say:
That I am an Evidence Custodian employed by the Henderson Police Department.
That on June 16, 1999, I received from a locked refrigerator in the Henderson City Jail, certain evidence bearing Identification No. 99-11844 of the Henderson Police Department, consisting of a blood kit sample, and:
That I kept the evidence in my sole custody or control in a refrigerator in the Evidence Vault and in substantially the same condition as when I received it, until I delivered it directly to Associated Pathologists Laboratories, on June 16, 1999.

/s/ Teri Perkins
Affiant
EVIDENCE CUSTODIAN

SUBSCRIBED AND SWORN to before me
this 16th day of June, 1999

Notary Public-State of Nevada County of Clark MICHELE B. AGUIAR No. 97-4059-1 My Appointment Expires September 26, 2001
Michele B. Aguiar
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

ASSOCIATED PATHOLOGISTS LABORATORIES
FORENSIC LABORATORY REPORT OF EXAMINATION
NAME: ROST, RONALD D. CASE#: 99-11844
LAB#: 99-049335 AGENCY: Henderson Police Dept.
ANALYSIS DATE: 06-17-99COLLECTED:06-10-99OFFICER: BROOKS
I, Brian W. Thomas, do hereby declare:

That I am a Forensic Specialist employed by Associated Pathologists Laboratories;

That on January 5, 1999, I first qualified in the Eight Judicial District Court in Clark County. Nevada, as an expert witness regarding the presence of alcohol or controlled substance in the blood of a person;

That I received a sealed blood alcohol kit bearing the above name, containing a sample of whole blood;

That I completed an analysis on the above sample and determined that the blood contained 0.18 percent by weight of alcohol and no controlled substances;

That I sealed and stored the sample in the designated locked storage cabinet located APL; That the evidence was in my custody from the time I first obtained it until I resealed and stored the sample, at which time it was in substantially the same condition as when I first obtained it.
I declare under penalty of perjury that the foregoing is true and correct.
Executed on: 6-18-99
/s/ B. Thomas
Brian W. Thomas Forensic

Specialist
/s/ Karen Berk
Witness

HENDERSON POLICE DEPT.
INTOXILYZER - ALCOHOL ANALYZER
NV MODEL 5000 SN 66-002602
06/10/99
OBSR. START=21:55
SUB-NAME=ROST, RONALD, DAVID
SUB DOB = 01/30/47 SEX =MALE
DRIV LIC=364104304147/NY
OFFICER =BROOKS, J
AGENCY=HPD
CIT=99-11844
LOC=IFO 831 HARBOR BEACH COUR
OPER=BROOKS, J CERT=022095
SOLUTION LOT NO=S-161

---BREATH ANALYSIS---

AIR BLANK .00 22:10
SIMULATOR TEST .11 22:10
AIR BLANK .00 22:11
SUBJECT TEST DEFICIENT 22:14
AIR BLANK .00 22:14
SUBJECT TEST DEFICIENT 22:19
AIR BLANK .00 22:19
SUBJECT TEST REFUSED 22:21
AIR BLANK .00 22:21
ALL RESULTS IN GRAM OF
ALCOHOL/210 LITERS 0F BREATH

Rost, Ronald David Subject's Name
2150 Time First Observed
HPD Jail Instrument Location
/s/ J.R. Brooks 607 Operator
Additional information and/or remarks
INTOXILYZER INSTRUMENT PRINTER CARD CM
1995 by CMI INC.

DEMPSEY, ROBERT & SMITH, LTD.
PAUL R. KIRST, ESQUIRE
Nevada Bar Number 003981
520 South Fourth Street, #360
Las Vegas, Nevada 89101
(702) 388-1216
Attorneys Appellant

HENDERSON MUNICIPAL COURT
CLARK COUNTY, NEVADA

RONALD DAVID ROST,	)	RECEIVED
	)	September 29, 1999
Appellant,	)	CASE NO.
vs.	)	75294876-01
	)	DEPT. NO. 1
THE CITY OF HENDERSON,	)	
	)	
Respondent.	)	
	)	

NOTICE OF APPEAL

TO: THE CITY OF HENDERSON, Respondent; and

TO: THE HENDERSON CITY ATTORNEY'S OFFICE,

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that RONALD DAVID ROST, the Appellant in the above-entitled action, intends to appeal, and that he does hereby appeal, the Courts Decision of September 20, 1999, wherein the Court found the Appellant Guilty of Driving or Being in Actual Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor.

This Appeal is taken from the whole of the Decision and every part thereof.

DATED this 28th day of September, 1999.

/s/ Paul R. Kirst

DEMSEY, ROBERTS & SMITH, LTD.
PAUL R. KIRST, ESQUIRE
Nevada Bar #3981
520 South Fourth St., #360
Las Vegas, Nevada 89101
Attorneys for Appellant

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Attorneys Appellant

FILED
1999 NOV 29 P 2:14
MUNICIPAL
COURT OF
HENDERSON
/s/CLERK

HENDERSON MUNICIPAL COURT
CLARK COUNTY, NEVADA

RONALD DAVID ROST,	)	
	)	
Appellant,	)	
	)	CASE NO.
	)	75294876-01
vs.	)	
	)	DEPT. NO. 1
THE CITY OF HENDERSON	)	
	)	
Respondent.	)	

AMENDED NOTICE OF APPEAL

TO: THE CITY OF HENDERSON, Respondent; and

TO: THE HENDERSON CITY ATTORNEYS OFFICE,

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that RONALD DAVID ROST, the Appellant in the

above-entitled action, intends to appeal, and that he does hereby appeal, the Court's Decisions of September 20, 1999 (finding of guilt at trial), and November 23, 1999 (sentencing) wherein the Court found the Appellant Guilty of Driving or Being in Actual Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor and sentenced him to the following: 1) Attend DUI School; 2) Attend one session of Victim Impact Panel; 3) Fine in the amount of $600.00; 4) Administrative fee of $105.00; 5) Court fees of $10.00; 6) Two days in jail; 7) Outpatient counseling of one session per week for four weeks;

Robert Zentz, Esq.
Nevada Bar Number 4428
Deputy City Attorney
243 Water Street
Henderson, NV 89015
702 565-2184
Attorney for Plaintiff

HENDERSON MUNICIPAL COURT
CLARK COUNTY, NEVADA

CITY OF HENDERSON,)
)
Plaintiff,)
)
VS.) DR No. 99-11844
) DCA No. 990002422
) Case No. 75294876-01
ROST, RONALD DAVID)
) Trial Date: September 20, 1999 /) I / 10
Defendant)

NOTICE OF PROSECUTION WITNESS LIST

TO: Ronald David Rost
831 Harbor Beach Court
Henderson, NV 89015

This Notice is filed pursuant to NRS 174.234. The individual(s) whose name is checked may be called by the

City of Henderson as a witness in the above entitled matter.

x Officer(s): J. Brooks
R. Vadasy

Henderson Police Department
223 Lead Street, Henderson, NV 89015

_____ Jackie Ballard, Evidence Custodian, Henderson Police Department*
223 Lead Street Henderson, NV 89015

x Teni Perkins, Evidence Custodian, Henderson Police Department* 223 Lead Street, Henderson, NV 89015

x Lois Holland Howie, RN, Henderson Corrections Department*
243 Water Street, Henderson, NV 89015

* These individuals are expected to testify to information in evidence/blood affidavit/declaration provided. However, the City of Henderson reserves the right and intends to offer into evidence the affidavit/declaration of the witness in lieu of testimony pursuant to NRS Chapter 50.

Pursuant to NRS 174.234:

Sandy Jones, 807 Center Street, Henderson, NV 89015
Kelly Jones, 807 Center Street, Henderson, NV 89015

NOTICE OF EXPERT WITNESS LIST

The individual(s) whose name is checked may be called as an expert witness. They are expected to testify to information in affidavits/declarations provided, and other matters properly relating thereto. However, the City of Henderson reserves the right and intends to offer into evidence the affidavit/declaration of the witness in lieu of testimony pursuant to NRS Chapter 50.

Dana C. Russell, Forensic Specialist

Mustapha M. Hatab, Forensic Specialist

x Brian W. Thomas, Forensic Specialist

Tammy Reddick, APL Courier

Darin Nelson, APL Courier

Mary Renee Moore, APL Courier

Associated Pathologists Laboratories
Forensic Toxicology Services
4230 Burnham Avenue, Suite 212
Las Vegas, Nevada 89119
DEMAND FOR DISCOVERY

Pursuant to NRS Chapter 174, including but not limited to NRS 174.234 and NRS 174.245, the City of Henderson demands defendant's witness us? and other required discovery.

Dated this 10th day of August, 1999.

SHAUNA HUGHES
CITY ATTORNEY
By:/s/ Robert Zentz,
ROBERT ZENTZ, ESQ.
State Bar #4428
Deputy City Attorney
243 Water Street
Henderson, NV 89015
(702) 565-2184

CERTIFICATE OF MAILING

The undersigned certifies that the above "Prosecution Notice of Witness/Expert Witness List" was mailed by certified mail, postage prepaid to the following individual:
Ronald David Rost
831 Harbor Beach Court
Henderson, NV 89015
Dated this 10th day of August, 1999.

/s/ employee of the City of Henderson
Employee of the City of Henderson

AFFIDAVIT OF EVIDENCE CUSTODY

STATE OF NEVADA)
) ss: ROST, RONALD D
COUNTY OF CLARK)

I, Teri Perkins, being first duly sworn, depose and say:

That I am an evidence Custodian employed by Henderson Police Department.

That on June 16, 1999, I received from a locked refrigerator in the Henderson City Jail, certain evidence bearing Identification No. 99-11844 of the Henderson Police Department, consisting of a blood kit sample, and:

That I kept the evidence in my sole custody or control in a refrigerator in the Evidence Vault and in substantially the same condition as when I received it, until I delivered it directly to Associated Pathologists Laboratories, on June 16, 1999.

/s/ Teri Perkins
Affiant
EVIDENCE CUSTODIAN

SUBSCRIBED AND SWORN to before me
This 16thday of June, 1999

/s/ Michele B. Aguliar NOTARY
PUBLIC IN AND FOR SAID
COUNTY AND STATE
Notary Public-State of Nevada
County of Clark

MICHELE B. AGUIAR
No. 97-4059-1 My Appointment Expires Sept. 26, 2001

HENDERSON POLICE DEPARTMENT
BLOOD DRAW DECLARATION

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

Howie, Lois Holland Exactly as on license) Being first duly sworn, deposes and says:

THAT I am a Registered Nurse (occupation) employed by EMSA Correctional - Henderson (employ)

THAT a regular part of my duties is the withdrawing of whole blood samples from persons and I am authorized to do so by::

Nevada Department of Human Resources X
Nevada State Board of Nursing
Nevada Board of Medical Examiners

That on 6-10-99 (date) at 2240 o'clock p. m. I withdrew a sample of who blood in a medically accepted manner and that I withdrew the sample using no alcohol solutions or alcohol based swab from a person known to me as: Rost Ronald D.(name) under Henderson DR# 99-11844; and

THAT I kept the sample of whole blood in my sole custody or control and it remained in substantially the same condition as when I first obtained it until on 6-10-99 (date) I delivered the sample to Officer Brooks (name of person) of the Henderson P.D. (name of law enforcement agency).

I Lois Holland Howie do hereby swear under penalty of perjury that the foregoing is true and correct.

/s/ Lois Holland Howie R.N.
Declarant's Signature

/s/I.R. Brooks P# 607 | Registered Nurse 6-10-99

Witness-Print and Sign | Title | Date

RN 23605
License Number

HPD-132
Revised 11-95
v